

# **City of Cincinnati Independent Monitor's Third Quarterly Report**

**October 1, 2003**

Quarterly Report regarding compliance with and implementation of the Memorandum of Agreement between the United States Department of Justice and the City of Cincinnati and the Cincinnati Police Department, and the Collaborative Agreement between the Plaintiffs, the Fraternal Order of Police and the City of Cincinnati

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# **CITY OF CINCINNATI INDEPENDENT MONITOR'S THIRD QUARTERLY REPORT**

## **EXECUTIVE SUMMARY**

This is the third report of the Independent Monitor under the Memorandum of Agreement (MOA) between the City of Cincinnati and the United States Department of Justice, and the Collaborative Agreement (CA) among City of Cincinnati, the American Civil Liberties Union of Ohio Foundation Inc., and the Fraternal Order of Police. The period covered is from April through July 1, 2003, though we also review more recent activities from July through September 30.

This report details the implementation of and level of compliance with the MOA and CA. The MOA calls for police reforms in the areas of police use of force, citizen complaints, risk management, and training. The CA calls for the implementation of Community Problem Oriented Policing (CPOP), mutual accountability and evaluation, bias-free policing and the establishment of the Citizen Complaint Authority (CCA).

## **MEMORANDUM OF AGREEMENT**

### **General Policies**

The MOA requires the Cincinnati Police Department (CPD) to establish a cadre of specially trained officers to respond to incidents involving persons who are mentally ill. The CPD has trained 90 officers as part of a Mental Health Response Team (MHRT), and revised its policies on dealing with the mentally ill. During this quarter, CPD began tracking the number of MHRT officers deployed in each district and on each shift, and tracking whether MHRT officers were dispatched to calls involving mentally ill persons. Most MHRT calls did result in a response by an MHRT officer. Continued compliance will depend on the availability and deployment of MHRT officers to incidents involving mentally ill individuals.

The CPD foot pursuit policy also complies with the MOA. Our review of investigations of incidents in which there was a foot pursuit showed that supervisors in some cases have evaluated the tactical soundness of the foot pursuit, while in others, there appeared to be no review of the foot pursuit.

### **Use of Force Policies**

CPD's current Use of Force policy is in compliance with the MOA. With respect to implementation of that policy, the Monitor Team reviewed a sample of chemical spray reports from the second quarter of 2003. In a number of cases, it was unclear whether or not subjects were warned, as required by the MOA, that chemical spray would be used if they did not comply with the officer's commands. Supervisors must include this information in their investigations and their Use of Force Reports. A second issue raised by our review is whether it is appropriate for an officer to use chemical spray on a restrained individual because that individual spit on the officer. While such a use of chemical spray might be justified as necessary to protect the officer given concerns associated with communication of infectious diseases, it would only be justifiable if other means not involving the use of force were ineffective. Moreover, a warning of chemical spray must be given before use.

The Monitor Team continued its review of CPD's use of canines for locating and apprehending suspects. During the second quarter of 2003, there were five canine bites. None of the investigations of these bites was completed before September 2003, however, so the Monitor was unable to review the incidents for this Report. Without reviewing these investigations, we are unable to assess compliance with the Canine provisions for this quarter. The Monitor Team did meet with the Canine Unit this quarter. The focus of our discussions was the dynamics of canine tracks and running apprehensions, and whether officers have opportunities either to maintain closer control of their dogs, or intervene before the dog has engaged once the suspect is located. We observed several training exercises and were impressed with the rigor of the training program.

## **Incident Documentation, Investigation, and Review**

On June 1, 2003, CPD began implementing its new Use of Force policy worked out with the Department of Justice. Under this policy, officers self-report certain uses of force involving “hard hands” and takedowns on a new “Non-Compliant Suspect” form (Form 18NC). Supervisors review these forms to assess the appropriateness of the officer’s use of force and tactics, but they do not need to respond to the scene to conduct a use of force investigation. For other types of force, such as chemical spray, takedowns with injuries, physical strikes, taser, beanbag or pepper-bag deployments, supervisors continue to respond to the scene and complete a Use of Force investigation and report (Form 18).

The Monitor Team reviewed a sample of use of force investigations to gauge implementation of CPD’s policies. We found that officers and supervisors generally are complying with the requirements of the MOA. Supervisors are responding to the scene and conducting investigations, including taped interviews with officers, witnesses and the subject of the use of force. One issue consistently raised by CPD supervisors is whether, in situations that led to physical strikes or take downs, chemical spray might have been a preferable tactic, with smaller risk of injury for the officer and the subject. Where appropriate, officers have been counseled on sound tactics.

CPD completed the review of three firearms discharges from the first quarter of 2003. Two of these discharges were accidental and the third involved a fatal officer-involved shooting in February, 2003. These were the first firearms discharges since the signing of the MOA and CA. Pursuant to the MOA, all three of the discharges were reviewed by a CPD Firearms Discharge Board (FDB). The FDB reports were consistent with the MOA requirements regarding firearms discharge investigations and FDB reports.

## **Citizen Complaint Process**

CPD revised the routing and review of complaints stemming from supervisors’ use of force investigations. The Internal Investigation Section (IIS) will now review the investigation after it has gone through the Patrol Bureau, and conduct additional



investigation if necessary. The IIS investigations of citizen complaints we reviewed in this quarter revealed mixed results, from thorough investigations that met MOA provisions to investigations involving leading questions and lack of rigor. Therefore, the City only is in partial compliance with the MOA provisions relating to investigations of citizen complaints.

### **Management and Supervision**

CPD is on track in its development of the risk management system required under the MOA. The City's contractor has installed the servers for the Employee Tracking Solution (ETS) as well as some of the software and other components of the system. CPD also is in the process of upgrading its desktop computers so that all of the work stations in the Department will have access to the ETS system. CPD also prepared a protocol for the system, describing the system and how it will be used. The Monitor Team reviewed a draft of the protocol and made suggestions for additional detail regarding the reports that the system will produce and the thresholds and comparisons that will be used by CPD to trigger a review of officer or unit performance. The protocol has now been submitted to the Department of Justice for its review and approval.

### **Training**

The Monitor Team observed police recruit training and found that it is consistent with the requirements of the MOA. The Monitor Team also discussed scenario-based training activities with training staff and reviewed examples of the scenarios being used. The scenarios include a mix of incidents involving CPD officers and incidents from other agencies, and they depict a wide range of situations involving tactical, ethical and legal considerations. CPD also made commendable progress in improving the FTO program. CPD launched a formal review process that helped identify existing FTOs who did not appear well suited for that role. Ten FTOs were deactivated following reviews of their performance.

## **COLLABORATIVE AGREEMENT**

### **CPOP**

In this quarter, the Parties continued to develop the process by which the Police Department and the community will engage in CPOP efforts. The challenge will be moving from theory to action.

The pilot problem-solving teams in Madisonville, Evanston, Walnut Hills, Over-the-Rhine, Avondale and the West End that were initiated by Cincinnati Community Action Now (CCAN) continued their efforts, with assistance from CPD personnel and the interim staff at the Community Partnering Center. CPD also provided training to eight additional neighborhood groups this summer. The training centered on the SARA problem-solving process,<sup>1</sup> as the Parties have not yet agreed upon a joint CPOP curriculum for community members and CPOP teams.

The Monitor Team believes that timely agreement on a joint CPOP training curriculum is critical. Since 14 neighborhoods have begun problem solving, it is incumbent upon the Parties themselves (even without a Community Partnering Center executive director) to ensure that the problem-solving teams are moving in the right direction. Otherwise, approaches and dynamics will become set and difficult to change as time passes. To facilitate this process, the Monitor has recommended a roundtable among the Parties to work on the content of the CPOP training, and on the SARA problem solving process to be used by the CPOP teams.

In the meantime, the Partnering Center has begun a search for a permanent executive director, who will then be able to hire permanent staff so that the Partnering Center can expand its efforts to additional neighborhoods in the City.

We received the Parties' Annual CPOP Report in early September. As we requested, the annual report catalogued efforts from prior years, as well as efforts since the CA has been in effect, so that the Parties have a baseline for comparing measures taken after the approval of the CA. The report describes CPD's early community policing efforts, including assignment of a

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<sup>1</sup> SARA stands for Scanning, Analysis, Response and Assessment.

neighborhood officer to each of the City's 52 neighborhoods, a Citizen and Student Police Academy, Citizens on Patrol, training of officers in community policing, and adoption (although not implementation) of a community policing strategic plan. With respect to work undertaken since August 2002, the report describes the efforts of the pilot CPOP teams, as well as several recent City/CPD initiatives, such as the draft CPOP website, Community Response Teams (undercover and uniformed two-day deployments in selected neighborhoods), the Code Enforcement Response Team, the Drug House Task Force, partnership with the Cincinnati Human Relations Commission, and the Youth Lighthouse.

This quarter, CPD began using the draft CPOP website, starting with write-ups of eight problem solving teams. We reviewed these eight reports and found that they lacked sufficient detail regarding problem-solving activities for us to judge compliance. Nonetheless, we recognize that these first efforts to populate the website are just a sample of what the system is able to convey. In our Report, we suggest modifications that will enhance the website's usefulness as a reporting system, problem tracking device, and a resource to others in the community, the City, and other cities. We also look forward to receiving problem-solving reports from District Commanders and Unit and Section Commanders, as required by the CA.

The Monitor Team also reviewed CPD's personnel evaluation system. As part of the CPD's transition to CPOP, the Department needs to develop job descriptions, performance measures, and a performance appraisal system that reinforce the organization's values and commitment to community policing and problem solving. In addition, there are steps that can be readily taken to improve the quality of the existing performance evaluations.

### **Evaluation Protocol**

Four bids were received in response to the City's RFP for a contractor to perform the tasks in the Evaluation Protocol. An Evaluation Committee, with representatives of each of the Parties, met to discuss the bids, along with the Deputy Monitor and the Parties' consultant on the selection process. Each Party had scored the bids based on an agreed-upon scoring grid. Further

discussions among the Evaluation Committee are anticipated in October. The Parties are also likely to consider changes in the scope of the Evaluation Protocol contract that will still deliver the essential evaluation components, but reduce the cost of the contract. While there has been progress in selecting an Evaluator, it will take some time before a selection is made, a contract with the Evaluator is negotiated, and actual work is begun on the Evaluation Protocol. The Parties are not in compliance with the Evaluation provisions at this time

### **Pointing Firearms Complaints**

The investigations of complaints of improper pointing of firearms from March 2000 to November 2003 have been forwarded to the Conciliator, Judge Michael Merz. The Parties have also submitted supplemental materials to Judge Merz for his review in making his decision under Paragraph 48.

### **Fair, Equitable and Courteous Treatment**

The CA calls for the City to report on its efforts pursuant to Ordinance 88-2001 to measure whether there is racial disparity in motor vehicle stops by CPD. Professors from the University of Cincinnati were selected to analyze traffic-stop data for the period May 1, 2001 to December 1, 2001. The study of this data will be complete by September 30, 2003. The Parties have met with the Monitor regarding the release of this data for public review.

With respect to collecting data on traffic stops and pedestrian stops since December 2001, CPD continues to collect the information on Contact Cards and manually enter the data into a database. Although efforts have been made to increase the accuracy of the data input into the system, the Parties remain out of compliance with the data collection and analysis provisions of the CA. This is in great measure because the outside contractor under the Evaluation Protocol has not yet been selected. Moreover, despite adding personnel to the data entry effort, there remains a significant backlog of Contact Cards to be entered into the CPD database. Third, CPD has not put in place procedures ensuring that officers will collect data on pedestrian stops. Last, the Parties have not participated in ongoing training regarding the Bias-Free Policing training program.

## **Citizens Complaint Authority**

The resignation of Nate Ford, the executive director of the CCA, has in some respects hampered CCA's progress and the good start on which we reported in our prior Quarterly Reports. A search for a new executive director is underway.

CPD has put in place new procedures for promptly referring complaints of excessive force to the CCA. The new procedures address the concern we raised in our Second Quarterly Report. The Monitor will review IIS and CCRP referrals to the CCA in the next quarter to determine whether CCA is getting prompt notice of citizen complaints. We will also review a sample of CCA investigations to evaluate the quality of investigations and compliance with provisions of the Agreements.

# **CITY OF CINCINNATI INDEPENDENT MONITOR'S THIRD QUARTERLY REPORT**

## **CHAPTER ONE. INTRODUCTION**

In our First Quarterly Report, we emphasized the need for commitment to the Agreements from all of the Parties, particularly the City and the Cincinnati Police Department (CPD). We also noted disagreements between the Department of Justice and CPD, tensions among the parties to the Collaborative Agreement (CA), and noncompliance with important provisions of the Agreements.

In our Second Quarterly Report, we reported significant progress in compliance with the Memorandum of Agreement (MOA) and in implementing the CA. There were also efforts to overcome the distrust among the parties. But we also described holes that needed to be filled, both in implementation of the Agreements and with respect to participation by the parties.

In this, our Third Quarterly Report, we are pleased to report continued progress in filling gaps in implementation. Policies and procedures required by the Agreements are, for the most part, in place, and implementation of MOA provisions are becoming operational. But the process of change takes time, and the transformation of an organization and its relations with the community involves many steps. Work by the Parties needs to continue toward a common understanding of the essential elements of CPOP. As described in this Report, there is still significant work to be done.

### **Participation of the Parties.**

In our Second Quarterly Report, we raised concerns regarding what we saw as a decline in the participation of the FOP and the Plaintiffs. During this quarter, the Monitor Team met with representatives of the Plaintiffs on this issue, and also met with several members of the Advisory Panel that the ACLU has established. We were impressed with the backgrounds and knowledge of the Advisory Board members with whom we met, and also with their dedication to and interest in the collaborative

process. It is our hope that they will take an active role in implementing the Agreements. We also understand that the Plaintiffs look to the permanent staff of the Community Partnering Center, once selected, to engage the community in community problem solving and undertake many of the CPOP tasks.

We also met with members of the Executive Committee of the FOP. They expressed dissatisfaction that certain provisions of the Agreement, which they see as critical, have not yet been implemented. They also reiterated the position taken by FOP members seeking to withdraw from the CA. As we stated in those meetings, we believe that rank and file officers are an essential element in the reform of police-community relations in Cincinnati. As the representative of these officers, the FOP voice at the table is needed, and its withdrawal would be a loss both for the officers and the community at large. The collaborative process has much to gain from their participation and we urge the FOP membership to remain a vital partner.

Concern also remains that communication among the Parties, an essential element of collaboration, remains, at times, strained and ineffective. Also, participation by all of the Parties in the development of the vision of CPOP and its implementation has been inconsistent. Improvement in these important areas will be essential to the efficient accomplishment of the goals and requirements of the Agreements.

## **Format of Report**

In this Report, as in our previous two reports, we examine the requirements of the Agreements, the status of the City's and the Parties' efforts to implement the provisions, and our assessment of compliance. We focus on areas where there has been progress in implementation, a significant lack of progress, or noncompliance. Provisions that are not covered in this Report will be addressed in future quarters and future quarterly reports.

Where relevant, we also describe the standards we are using to assess and measure compliance. For some provisions, there is a quantifiable way of measuring implementation of the Agreements. For others, our assessment is more qualitative, and necessarily involves judgment calls regarding the Parties' efforts. Wherever

possible, we attempt to provide the Parties with benchmarks against which their efforts can be measured, and our expectations for the steps to be taken in future quarters. The Evaluation Protocol, once it is implemented, will provide additional tools by which to measure the success of the Agreements; i.e., has implementation of these provisions accomplished the goals set out in the Agreements.

It is our view that we should not monitor the Agreements mechanistically, and assess only whether required procedures have been put in place, without looking at the success or failure of the procedures to achieve the aims for which they were designed. At the same time, we know that compliance with the Agreements cannot be measured simplistically by looking at whether the crime rate has risen or fallen, or whether confidence in the police has gone up or down (as measured, for example, by citizen surveys). These “ultimate” outcomes are affected by a multitude of factors, many of which are outside the scope of the Agreements. Our assessment will be a mix of the above approaches, informed by the expertise of our team members and by “best practices” in the policing profession.

## **Acknowledgments**

During this quarter, the Monitor Team came to Cincinnati for an extended site visit. Members of the Monitor Team participated in ride-alongs with CPD officers and supervisors, observed training, and reviewed CPD documents and files. We also met with members of the FOP executive committee, members of the ACLU advisory panel, and the interim staff of the Partnering Center, among others. We would like to take this opportunity to thank all of those with whom we met for their openness and candor, but especially the CPD members with whom we rode.

In the cover letter to the CPOP annual report, the representatives for each of the Parties wrote:

[I]t is clear that the dedication of our citizens and police has the potential to make Cincinnati a model in police-community relations. This partnership will lead to a future where all citizens can be assured that police in collaboration with



community stakeholders are diligently working to enhance the quality of life for all citizens.

We share this assessment. We believe that each of the Parties has been working in good faith to implement the Agreements. However, success is not assured. Continued energy and dedication will be necessary for the partnership envisioned by these Agreements to take a lasting hold and produce the kind of results all of the citizens of Cincinnati deserve.

## **CHAPTER TWO. MEMORANDUM OF AGREEMENT**

### **I. General Policies**

#### **A. Mental Health Response Team [MOA ¶ 10]**

##### **1. Requirement**

CPD is required to create a “cadre of specially trained officers available at all times to respond to incidents involving persons who are mentally ill.” These officers will be called to the scene and assume primary responsibility for responding. Training for these officers shall include multi-disciplinary intervention training, with a particular emphasis on de-escalation strategies, as well as instruction by mental health practitioners and alcohol and substance abuse counselors. CPD also shall implement a plan to partner with mental health care professionals, to make such professionals available to assist CPD officers on-site with interactions with mentally ill persons.

##### **2. Status**

As noted in previous reports, CPD has trained 90 officers as Mental Health Response Team (MHRT) officers. During this quarter, CPD began to track the number of MHRT officers deployed in each district and on each shift on a daily basis. This tracking allows CPD and the Monitor to assess whether there are sufficient numbers of MHRT officers on patrol available to respond to calls involving mentally ill individuals.

A review of the statistics for May and June shows that for the City as a whole, there were MHRT officers working every shift each day. Broken down by Districts, however, there were a number of days where the coverage was light, where no MHRT trained officer was available within a particular District on a particular shift. However, CPD policy calls for MHRT officers from adjoining Districts to be dispatched when there are no MHRT officers within the District.

CPD also tracked the deployment of MHRT officers to MHRT calls. In April 2003, MHRT officers were dispatched on 55.6 percent of the MHRT calls (248 out of 446 calls). In May 2003, that

percentage went up to at least 75.5 percent, and in June, it was at least 69.5 percent.<sup>2</sup>

CPD continues to work with the Mental Health Association to design an in-service training program for MHRT officers.

### **3. Assessment**

The Police Department continues to make improvements to its MHRT program, and based on our information to date is in compliance with these provisions of the MOA. Continued compliance will depend on the availability and deployment of MHRT officers to incidents involving mentally ill individuals.

#### **B. Foot Pursuits [MOA ¶ 11]**

##### **1. Requirements**

The MOA requires CPD to develop and adopt a foot pursuit policy. The policy must require officers to consider particular factors in determining whether a foot pursuit is appropriate.

##### **2. Status**

On August 19, 2003, CPD added the following provision to its foot pursuit policy:

- E.3. If the foot pursuit results in a reportable incident such as a use of force, injury to prisoner, auto accident, etc., the supervisor will include an analysis of the tactical soundness of the foot pursuit in the appropriate report.

CPD also included training on the foot pursuit policy in its Academy recruit training in May 2003, as part of the review of CPD's Tactical Patrol Guide. Roll call training for officers in the third quarter also included a review of the foot pursuit policy and foot pursuit scenarios.

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<sup>2</sup> If you add to this percentage the number of MHRT calls where a supervisor disregarded the MHRT call (determined that the call did not involve a mentally ill individual and an MHRT officer was not needed), these percentages increased to 86.3 percent and 75.6 percent, respectively.

### **3. Assessment**

CPD's foot pursuit policy is in compliance with the MOA. Our review of investigations of incidents in which there was a foot pursuit indicated that supervisors in some cases have evaluated the tactical soundness of the foot pursuit, while in others, there appeared to be no review of the foot pursuit. With the change in procedures described above, we anticipate that a greater number of future investigations will include such a review.

## **II. Use of Force**

### **A. General Policies [MOA ¶¶ 12-13]**

#### **1. Requirements**

Under the MOA, Cincinnati is required to revise its Use of Force policy. The revised policy must do the following:

- It must clearly define the terms used in the policy
- The term “force” must be defined as it is defined in the MOA
- It must incorporate a “use of force model” that relates the officer’s responses and use of force options to the actions of the subject, and teaches that disengagement, area containment, or calling for reinforcement may be an appropriate response to a situation
- Whenever possible, individuals should be allowed to submit to arrest before force is used
- Advise against excessive force
- Prohibit choke holds
- The term “restraining force” must be removed from CPD’s policy
- CPD’s revised Use of Force policy must be published on CPD’s website and be disseminated to community groups

#### **2. Status**

A final Use of Force policy, Procedure 12.545, was included in the CPD Staff Notes on July 29, 2003. This policy includes all of the changes agreed to by CPD and the Department of Justice.

#### **3. Assessment**

CPD’s current Use of Force policy is in compliance with the MOA. A chart of uses of force, by category, over the last four quarters is attached as Appendix 1.

## **B. Chemical Spray [MOA ¶¶ 14-19]**

There were 155 incidents in which CPD officers used chemical irritant spray in this quarter. This compares to 122 uses of chemical irritant in the first quarter of 2003, and 117 incidents in the fourth quarter of 2002. In this quarter, there were 15 uses of chemical spray on persons restrained (in handcuffs), compared to 26 in the last quarter. There were no uses of chemical spray in a crowd situation in this quarter.

### **1. Requirements**

CPD must revise and augment its chemical spray policy to do the following:

- Clearly define terms
- Limit use of spray, including against crowds, to only those cases where force is necessary to effect the arrest of an actively resisting person, protect against harm, or prevent escape
- Provide that chemical spray may be used only when verbal commands would be ineffective
- Require supervisory approval for use of chemical spray against a crowd, absent exigent circumstances
- Require a verbal warning and the opportunity to comply before using a chemical spray, unless doing so would be dangerous
- Require officers to aim at the subject's face and upper torso
- Provide guidance on duration of bursts and recommended distance
- Require officers to offer to decontaminate sprayed individuals
- Request medical response for complaining subjects
- Prohibit keeping sprayed subjects in a face down position any longer than necessary
- Prohibit use of spray on a restrained person, except to protect against harm or escape
- Use of spray against restrained persons must be investigated, including tape recorded statements of

officers and witnesses. Investigations of these incidents must be reviewed by CPD's Inspections Section.

- Provide restraining equipment in CPD squad cars
- Provide In-service training on chemical spray
- Account for chemical spray canisters
- Periodically review research on chemical spray

## **2. Status**

In its August 12, 2003, MOA Status Report to the Monitor, CPD reports that new police cars are being ordered with Pro-Gard window bars, an additional prisoner restraint component. These window bars protect against prisoners damaging the glass window or window frame, and allow the windows of the car to be open for fresh air when transporting prisoners. CPD anticipates that the window bars will reduce the likelihood of prisoners trying to kick out the police cars' windows, and will thus reduce the need to use chemical spray on those prisoners. Where chemical spray is used on restrained prisoners in the rear of the police car, being able to open the windows will improve decontamination of the car and of sprayed individuals.

In our previous Quarterly Reports, we also raised questions regarding the use of chemical spray on persons who were suspected of swallowing drugs, and we requested information on CPD's efforts to review current research regarding CS spray (its current formulation of chemical spray) and other types of chemical irritants. CPD shortly will be providing the Monitor with a report on its research on the issue of using chemical spray on persons who have swallowed drugs. With respect to the different formulations of chemical sprays, the CPD's Inspections Section reaffirmed its conclusions from January 2002 that CPD should continue its use of CS spray rather than switching to OC spray (oleoresin capsicum, or pepper spray) or some other formulation of chemical irritant.

## **3. Assessment**

### **a. Policy**

As noted in our Second Quarterly Report, CPD's chemical spray policy meets the requirements of the MOA.

## **b. Review of Sample of Uses of Chemical Spray**

The Monitor Team reviewed a sample of chemical spray reports from the first and second quarters of 2003. As with our review of chemical spray reports in previous quarters, it was difficult in some of the cases reviewed to determine whether the use of chemical spray complied with the requirements of the MOA and with CPD policy.

In our First Quarterly Report, we noted that the “asked,” “told,” “demanded” check boxes under the “Verbalization” category on the Use of Force form (Form 18) did not document for the reviewer whether the officer warned the subject that chemical spray would be used if the subject did not comply with the officer’s commands. In response to our recommendation, CPD has added a specific check box “Subject warned that force would be used” to the Use of Force Report. Most of the incidents reviewed this quarter occurred prior to the advent of the new Use of Force forms, so this new “Subject warned” field was not included.

Therefore, it still remains unclear in a number of instances as to whether a warning of impending force was given prior to chemical spray being used. We recommend that the narrative portion of the Use of Force Report not only describe the circumstances that led up to the use of force, but also clearly articulate the extent to which warnings are given. The narrative is also the place to note circumstances where exigency precluded a warning.

A second issue raised by our review is whether it is appropriate for an officer to use chemical spray on a restrained individual because that individual spit on the officer. This occurred in several instances where the restrained individual was in the rear of a police car. Arguably, the use of chemical spray in these circumstances can be justified under the MOA and CPD policy as necessary to protect the officer from harm. Concerns associated with communication of infectious diseases such as hepatitis and HIV may make the use of force reasonable. However, even accepting these concerns as valid, the use of chemical spray would only be justifiable if other means, not involving the use of force, were ineffective. Moreover, the MOA and CPD policy also would require a warning to the individual that chemical spray will be used



if the behavior is not stopped.<sup>3</sup> These prerequisites must be clearly articulated by the officers and documented in the supervisors' Use of Force Reports. In a number of instances, the Use of Force Reports were not sufficient to determine whether this was the case, or, instead, whether officers used chemical spray in a quick reaction to (or in retaliation for) being spit upon.

Other than the two issues above, it appears from our review that chemical spray is being used consistent with the MOA provisions, including being aimed at the head and torso, and that decontamination is being offered. However, we would like to see more information about the incidents being captured in the narrative portion of the report.

### **C. Canines [MOA ¶ 20]**

In the second quarter of 2003, there were 167 total canine deployments, 24 canine apprehensions (where a suspect was found and arrested) and 5 canine bites. For the six-month period of December 1, 2002 to May 30, 2002, CPD calculated the bite ratio (the number of bites compared to the number of total apprehensions involving a canine, with and without a bite) for the canine unit to be 9.63 percent.<sup>4</sup> For the six-month period from January 1, 2003 to June 30, 2003, there were 60 apprehensions and 7 bites, for a bite ratio of 11.7 percent.

#### **1. Requirements**

The MOA requires the CPD to revise and augment its canine policies, subject to the review and approval of the Department of Justice. The CPD is to make continued improvements in its canine operations, including the introduction of an "improved handler-controlled alert curriculum" and the use of new canines. Specifically, the new canine policy must:

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<sup>3</sup> CPD strongly maintains that the use of chemical irritant may under certain circumstances be an appropriate response to individuals who spit at officers while in custody. CPD believes that the required warnings are being given, and has stated that it will take measures to ensure that warnings are properly documented.

<sup>4</sup> There were 83 apprehensions in this six-month period, and eight bites.

- Limit off-leash deployments to searches of commercial buildings or for suspects wanted for a violent offense or reasonably suspected of being armed.
- Require approval of a supervisor before deployment, except for on-leash deployments.
- Provide for a loud and clear announcement, warning of the canine deployment, and require officers to allow the suspect time to surrender.
- Handlers shall not allow their canines to bite a person unless the person poses an imminent danger, or is actively resisting or escaping.
- Where the canine does bite a person, the dog shall be called off at the first moment the dog can safely be released. The policy shall prohibit canines from biting nonresistant subjects. Also, immediate medical attention must be sought for all canine related injuries.
- CPD shall track deployments and apprehensions, and calculate bite ratios. These bite ratios shall be included in the Risk Management System.

## **2. Status**

The Monitor Team met with members of the Canine Unit and had an opportunity to view several canine training exercises, including a simulated building search, article searches in a field, and an impressive tactical exercise involving an off-leash area search for an armed subject. We also had an opportunity to observe a training tracking search at night. Throughout the training exercises, the handlers maintained control over the dogs either by voice command or lead. In the case of the simulated building search and the tactical field exercise, the dogs engaged a resisting subject. In each case, the handler was able to command the dog to disengage quickly, once the subject was no longer a danger to the officer. The canine training officer's work with the handlers and dogs was evident in the strict control and obedience exhibited during these exercises.

The Monitor Team also continued our discussions with the Canine Unit and commanders about canine tracks on lead. These discussions focused on (1) the extent to which canine officers have control over their dogs; (2) whether officers are able to ascertain that the canine has alerted on a subject prior to the canine reaching the subject and engaging (biting) the subject; (3) the extent to which dogs on a long lead will be out of sight of the handler; and (4) whether there is an opportunity for the canine handler to recall his or her dog if the subject either surrenders at the last minute, or the dog locates the subject's hiding place.

As required under the MOA, CPD calculated the bite ratio for the Canine Unit for a rolling six-month period. The bite ratio was below the MOA's threshold of 20 percent that would trigger a review of the unit's activities. For individual canine handlers, the bite ratios for two of the ten handlers were over 20 percent, and one had a ratio of 20 percent. The Canine Unit reports that the use of force and canine policies were reviewed with all ten of the officers, and that each of the canine bites was consistent with Department policies and procedures, involving minimum injury to the arrested. It may be the case that the bite ratios for the individual handlers are simply a function of the kind of deployments of those individual handlers, or of a small number of finds and bites (for example, one of the handlers had a high bite ratio because he had only three finds and one bite). However, it would be useful for the Canine Unit to examine, for example, whether the handlers who had no bites are conducting their deployments in a fashion any different than the handlers with canine bites.

It is also instructive to look at the deployment forms for canine apprehensions without bites. Several examples illustrate the advantages of searching with a canine team. In each of the cases below, the canine deployments followed the requirements of the MOA and CPD policy.

- Canine team responded to location for a building search for a suspect wanted on two felony warrants and assault on a police officer. After canine warning was given and dog barked, the suspect gave up without incident.
- Canine responded to a commercial burglary and observed suspect in fenced-in area trying to break into a car. The

suspect jumped over the fence into a wooded area. The handler gave a canine warning, waited, and then gave a second warning before beginning an on-lead track. When the canine team came out of the wooded area into a clearing, the handler gave another warning, and the suspect surrendered.

- Suspect was seen by undercover officers placing a rifle and handgun into a car. A canine team and patrol officers approached on foot. When the suspect started to run, the canine handler told him to stop or he would release the dog. The suspect stopped and was taken into custody.
- Suspect was wanted for felony domestic violence. Officers approached the front door while the canine team was deployed to the rear of the house. When the suspect came out of the back of the house to attempt to flee, he saw the canine team and gave up.
- Breaking and entering suspect was seen in building by Citizens on Patrol. Canine team responded for a building search. When no-one was found inside, the canine was deployed on a tracking search. The canine tracked to an apartment with an open door. The handler gave a canine warning, and the suspect then surrendered.
- Patrol and canine teams responded to breaking and entering in progress. The canine handler deployed to the rear door, knocked loudly and gave two canine warnings. One suspect came out the front door and surrendered to police. The canine team then responded to the front door, gave another warning, and the second suspect came out and was taken into custody.

### **3. Assessment**

During the second quarter of 2003, there were five canine bites. None of the investigations of these bites was completed before September 2003, however, so the Monitor was unable to review the incidents for this Report. We expect the CPD to complete its review of these incidents so that they can be included in the next Quarterly Report. Without reviewing these

investigations, the Monitor is unable to assess compliance with the canine provisions for this quarter.

The Monitor was provided one investigation of a canine bite that occurred in the fourth quarter of 2002. This deployment was to track an aggravated domestic violence suspect. However, the individual tracked and bitten was a different person than the suspect sought. The person tracked did not match the description of the felony suspect, and he was wanted only on misdemeanor warrants. The sergeant who authorized the deployment was disciplined for not responding to the scene and properly assessing whether a canine team should be deployed. As we note in our review in Chapter Four, we also raise some questions regarding whether the individual being tracked could have been apprehended using less forceful means.

In future quarters, we will continue to critically assess CPD's canine operations. CPD must emphasize the importance of adhering to the deployment criteria in the MOA and its policies, and of thoroughly and promptly investigating deployments that result in bites.

#### **D. Beanbag Shotguns [MOA ¶¶ 21-23]**

There were no changes in the CPD beanbag shotgun policy, which meets MOA requirements. There was one beanbag deployment in this quarter. This deployment is reviewed in Chapter Four.

### **III. Incident Documentation, Investigation**

#### **A. Documentation [MOA ¶¶ 24-25]**

##### **1. Requirements**

- All uses of force are to be reported. The Use of Force form shall indicate each use of force and require evaluation of each use of force. Use of Force Reports will include the supervisor's and officer's narrative description, and the officer's audio-taped statement.

- CPD will implement an automated data system allowing supervisors access to all use of force information.
- CPD will implement a Canine Deployment form.
- If the gun pointing requirement is triggered under the Collaborative Agreement, data reported shall be included in the risk management system.

## **2. Status**

On June 1, 2003, CPD began implementing its new Use of Force policy worked out with the Department of Justice. Under this policy, officers self-report certain uses of force involving “hard hands” and takedowns on a new “Non-Compliant Suspect” form (Form 18NC). For these types of incidents, supervisors do not need to respond to the scene and conduct an investigation, but they do need to review the completed Non-Compliant Suspect form and assess the appropriateness of the officer’s use of force and tactics. For other types of force, such as chemical spray, take-downs with injuries, physical strikes, taser, beanbag or pepper-bag deployments, supervisors continue to respond to the scene and complete a Use of Force Report (Form 18).

In our Second Quarterly Report, we noted that CPD was not audio-taping subject, witness and officer statements in investigations of police use of the taser. Indeed, CPD’s Use of Force policy is inconsistent with respect to this issue, stating in one place that taser investigations should include audio-taped statements, while stating in another section that they need not. Since our Second Quarterly Report, the manufacturer of the taser used by CPD officers has been bought by a competing manufacturer, and the tasers used by CPD have been removed from service. CPD is now considering an expanded deployment of tasers from the acquiring company. If the Department proceeds with this deployment, it will propose a reporting protocol for use of the tasers. The Monitor will review the proposed protocol and determine its consistency with the MOA at that time

### **3. Assessment**

CPD is in compliance with the use of force reporting requirements in the MOA. In all cases where a use of force has been reported, officers have completed a Non-Compliant Suspect form or called a supervisor to the scene to conduct a use of force investigation and complete a Use of Force form.

## **B. Investigation [MOA ¶¶26-31]**

### **1. Requirements**

- Officers to notify supervisor following any use of force, or allegation of excessive force. Supervisor to respond to scene. Incident not to be investigated by officer who used force or who authorized force.
- CPD supervisors will investigate each use of force incident, with evaluation of compliance with CPD policies and of tactics, including basis of any stop or seizure.
- IIS will respond to scene of all “serious uses of force” and all canine bites with serious injuries. Inspections Section will review all investigations of canine bites, beanbags, foam rounds and baton uses.
- Investigators prohibited from asking leading questions. Investigators to consider all relevant evidence and make credibility determinations. No automatic preference for officer’s statement over citizen’s; statements of witness with connection to complainant should not be discounted. CPD to resolve material inconsistencies. CPD will train investigators on factors to consider in investigations.
- Investigators to ensure that all witness officers provide statement. Supervisors will ensure that reports list all officers involved or on scene, and document any medical treatment or refusal of medical care.
- Lieutenant or higher will review each investigation conducted by CPD supervisors and identify any deficiency and require corrections. CPD supervisors to be held accountable for

quality of investigations. Appropriate non-disciplinary or disciplinary action will be taken if investigations are not thorough, properly adjudicated, or where appropriate corrective action is not recommended.

## **2. Status**

In response to concerns raised in our Second Quarterly Report, CPD has reiterated to its supervisors the need for separation of the investigating supervisor from the supervisor who authorized the use of force. CPD also has directed investigating supervisors to provide photographs, diagrams, or other documentary evidence whenever they are relevant in connection with incident investigations.

## **3. Assessment**

### **a. Policy**

CPD's policies on investigating use of force incidents comply with the MOA.

### **b. Review of Sample of Force Investigations**

The Monitor Team reviewed a sample of investigations of officer use of force, including take-downs, use of chemical irritant, canine deployment, use of impact weapons, and use of a firearm.

As noted in Chapter Four, we found that CPD's use of force and subsequent review and investigation of force incidents generally comply with the requirements of the MOA. The supervisory investigations are, for the most part, complete, and the reviews of the investigations by the chain of command are raising the appropriate issues. One issue consistently raised is whether, in situations that led to physical strikes or take-downs, chemical spray might have been a preferable tactic, with smaller risk of injury for the officer and the subject. Where this is the case, CPD's command review process has raised the issue and when appropriate, officers have been counseled on sound tactics. Also, in contrast to prior quarters, there were no incidents we reviewed from this quarter where the investigating supervisor was the same



as the supervisor authorizing the use of force or participating in the incident.<sup>5</sup>

What did strike us, however, was the number of incidents where force was used while an officer was working on an off-duty detail, for example as a security guard at a grocery store. We believe it may be helpful for the Police Department to track and examine force incidents occurring during a secondary employment assignment. This review may reveal circumstances and employment sites that present enhanced risk factors for the officers assigned there. It might also lead to adjustments in tactics or training that would be advisable.<sup>6</sup>

Second, as we discussed above with respect to chemical spray incidents, it remains unclear in some instances whether a warning of impending force is given prior to force being applied. We recommend that the narrative portion of the summary not only indicate the circumstances that led up to the use of force, but also clearly articulate the extent to which warnings were given where feasible. While the standardized forms serve as a good checklist tool and clearly expedite the reviewing process, more attention can be paid to the narrative as the vehicle to articulate compliance.

## **C. Review of Critical Firearms [MOA ¶¶ 32-34]**

### **1. Requirements**

- **Critical Firearms Discharges.** CPD investigations will account for all shots, and locations of officers discharging their firearm. CPD will conduct appropriate ballistics or crime

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<sup>5</sup> The one canine investigation reviewed this quarter was done by the supervisor who authorized the deployment, but this incident occurred in December 2002. CPD has raised a concern in its Status Report that the Canine Unit supervisor is both the preferred supervisor to authorize deployment and the most experienced in investigating canine bite incidents. However, there are other supervisors who can conduct appropriate canine investigations, and in many instances the Canine Unit supervisor will be available to conduct the investigation because the deployment was authorized by other supervisors.

<sup>6</sup> Review of this data may also highlight particular officers who may be working in excess of the allowed secondary employment hours and thus may not be exercising sound judgment due to fatigue. The Inspections Section monitors hours for officers engaged in extension of police service capabilities.

scene analysis, including gunshot residue or bullet trajectory tests.

- A Firearms Discharge Board (FDB) shall review all critical firearms discharges; review IIS and CIS investigation for policy compliance, tactical and training implications. The FDB will prepare a report to the Chief of Police. The FDB will determine (a) whether all uses of force during encounter were consistent with CPD policies and training; (b) whether the officer(s) used proper tactics; (c) whether lesser force alternatives reasonably were available.
- The policy for the FDB shall include: a review within 90 days from the end of the criminal investigation; FDB to act as quality control; authorize recommendations to the Chief of Police; require annual review for patterns, with findings to the Chief of Police.

## **2. Status**

There were no firearms discharges in the second quarter of 2003. However, CPD completed the review of three firearms discharges from the first quarter of 2003. Two of these discharges were accidental, and the third involved a fatal officer-involved shooting in February, 2003. These were the first firearms discharges since the signing of the MOA and CA. Pursuant to the MOA, all three of the discharges were reviewed by a CPD Firearms Discharge Board.

## **3. Assessment**

Our review of the three FDB reports is contained in Chapter Four. The reports are in compliance with the MOA requirements regarding firearms discharge investigations and FDB reports.

## **IV. Citizen Complaint Process**

### **A. Openness of Complaint Process [MOA ¶¶ 35-38]**

CPD is in compliance with these provisions of the MOA. As required by the MOA, CPD accepts complaints in any format – including in person, by mail, from the CCA or stemming from a

supervisor's investigation of a use of force incident. Our review of complaints in this quarter did not reveal barriers to filing a complaint or discouragement by officers of persons seeking to make a complaint against a member of the CPD.

In our Second Report, we noted that the MOA requires IIS to make the final determination of whether a complaint is a serious one that requires IIS investigation or a minor one that can be handled through the Citizen Complaint Resolution Process (CCRP), which involves an investigation by a supervisor in the officer's commanding unit. While the formal procedures in Procedure 15.100 still indicate that the District Commander makes the final decision regarding the routing of a citizen complaint, CPD has stated that in practice, IIS and the Administrative Bureau Commander review all complaint assignments and can overrule the determination of a District Commander. In addition, in our review of complaint investigations, we have not come across complaints of serious misconduct, unnecessary pointing of firearms, or excessive use of force that have been handled as CCRP cases. There were, however, some CCRP cases this quarter that included allegations of discrimination, which, under the MOA, are to be investigated by IIS. A second issue regarding CCRP investigations is whether such complaints are being directed to the CCA in a timely manner, as required under both the MOA and CA.

## **B. Investigation of Complaints [MOA ¶¶ 39-50]**

### **1. Requirements**

- Preponderance of evidence standard; City will develop appropriate training
- Officers who used spray or force, or authorized the conduct at issue, may not investigate the incident
- All relevant evidence to be considered
- No automatic preference of officer's statements; investigators will attempt to resolve inconsistencies; no leading questions; all officers on the scene are required to provide a statement
- All relevant police activity, including each use of force, will be investigated; searches and seizures will be evaluated; investigations are not to be closed simply because a complaint has been withdrawn

- Conviction of the complainant will not be used as evidence of the appropriateness of the action of the CPD officer
- Complainant to be kept informed
- IIS to investigate complaints of force, pointing firearms, searches, discrimination
- Citizen Complaint Resolution Process (CCRP) complaints will be fully investigated
- CCRP complaints will be investigated by chain of command, with report. District or unit commander will evaluate investigation
- For IIS Investigations:
  - a. tape all interviews with complainants, involved officers, and witnesses
  - b. interviews at convenient times
  - c. prohibit group interviews
  - d. notify supervisors of complaints
  - e. interview all appropriate CPD officers, including supervisors
  - f. collect and analyze all appropriate evidence, canvass scene for witnesses, obtain medical records
  - g. identify material inconsistencies
- Report on investigation to include a summary, proposed findings and analysis
- Investigation to be complete within 90 days, absent exceptional circumstances.

## **2. Status**

In our Second Quarterly Report we noted that most complaints relating to use of force were being investigated by a District sergeant, and that the sergeant's investigation was then reviewed by the CPD Patrol Bureau chain of command, the Inspections Section and by the Chief of Police, before it would be routed to IIS. At that point, IIS simply logged in the complaint and closed it with the Chief's determination. IIS did not provide substantive review or additional investigation, and by the time the file reached IIS and was then referred to CCA, often several weeks, if not months, had passed.

CPD has now revised the routing and review of complaints stemming from supervisors' use of force investigations. To begin with, the investigating sergeant must fax a copy of the Citizen

Complaint Form to IIS as soon as it is prepared, which form can then be copied to CCA in a timely manner. Also, IIS will provide a substantive review of the complaint investigation after it has reached the Patrol Bureau Commander. IIS has adopted a new SOP 104.02, which describes the standard for review of allegations of excessive force documented by a Use of Force Report or Injury to Prisoner Report.

### **3. Assessment**

Our review of a sample of complaint investigations is contained in Chapter Four. The new procedures for substantive IIS review of complaints stemming from District use of force investigations were not in place for the complaints reviewed this quarter. The complaints reviewed in this quarter revealed a mix of results, from thorough investigations that met MOA provisions to investigations involving leading questions and lack of rigor. Therefore, we conclude that the City is only in partial compliance with the MOA provisions relating to investigations of citizen complaints.

## **C. Adjudication of Complaints [MOA ¶44-45]**

### **1. Requirements**

- Every allegation to be resolved with one of four determinations – unfounded, sustained, exonerated, not sustained
- Unit commanders to evaluate each investigation to identify problems and training needs

### **2. Status**

The City has revised the CCRP process so that the MOA complaint closure terms [sustained, not sustained, unfounded, exonerated] are applied to complaints adjudicated through the CCRP process. The investigating supervisor continues to determine whether the officer's actions "met" or "didn't meet" CPD standards. However, the Bureau Commander reviewing the CCRP file now determines which of the closure terms is appropriate prior to the file being sent to the Police Chief for final review. Procedure

15.100, Citizen Complaints, has been revised to reflect this change, effective July 8, 2003.

### **3. Assessment**

The City is in compliance with the MOA provisions relating to adjudication of investigations.

Our review of CCRP files revealed that CPD District supervisors were complying with the MOA provisions requiring that CCRP cases be fully investigated; that a determination be made of the appropriateness of the officer's actions; and that the investigation be concluded prior to, and be independent of, the resolution meeting.

#### **D. Investigations by the CCA [MOA ¶¶ 51-56]**

##### **1. Requirements**

- CCA to assume all of the responsibilities of the Office of Municipal Investigation (OMI) within 120 days from the date of the Agreement
- Copies of all complaints, no matter with which office they are filed, will be directed to the CCA; the CCA is to have jurisdiction over complaints of excessive force, pointing firearms, unreasonable search or seizure, or discrimination; CCA shall have sufficient number of investigators, with a minimum of five
- CPD officers must answer CCA questions; CCA director to have access to CPD files and records
- City to develop procedures to coordinate parallel investigations
- City will take appropriate action on CCA completed investigations
- CCA will complete investigations within 90 days; City Manager to take appropriate action within 30 days of CCA completion of investigation

## **2. Status**

The resignation of Nate Ford, the executive director of the CCA, has in some respects hampered CCA's progress and the good start on which we reported in our prior Quarterly Reports. CCA now has an interim executive director who works 25-30 hours per week, and four staff investigators. The City is in the process of hiring a fifth full-time investigator, and it has agreed to include the Plaintiffs and the FOP in the selection process, as was done for the earlier hires.

In our Second Quarterly Report, we expressed concern that the CCA was not receiving citizen complaints in a timely manner when the complaints resulted from a District supervisor's investigation of use of force. Those investigations were being routed through the chain of command in the Patrol Bureau, through the Inspections Section and then to the Chief of Police before they were referred to IIS. IIS would then make a copy of the complaint for the CCA. This sometimes resulted in delays of as long as six weeks before the CCA received a complaint.

CPD has now revised its citizen complaint procedures to provide that the investigating supervisor will now fax a copy of the citizen complaint form to the IIS as soon as it is completed. IIS will then refer the complaint to CCA, so the CCA can begin its own independent investigation in a timely manner.

## **3. Assessment**

The new procedures for promptly referring complaints of excessive force to CCA address the concern we discussed in our Second Quarterly Report. The Monitor will review IIS referrals to CCA in the next quarter. We will also review whether complaints that CPD assigns to the CCRP process are being sent promptly to the CCA. Third, we will review a sample of CCA investigations to evaluate the quality of investigations and compliance with MOA provisions. At this time, we are unable to assess compliance with the MOA provisions.

## **V. Management and Supervision**

### **A. Risk Management [MOA ¶¶ 57-64]**

#### **1. Requirements**

Under the MOA, CPD is required to enhance and expand its risk management system by creating a new “computerized, relational database.” CPD is to use the data in this system “to promote civil rights and best practices, manage risk and liability, and evaluate the performance of CPD officers.”

- The information in the Risk Management System is to include:
  - uses of force
  - canine bite ratio
  - canisters of chemical spray used
  - injuries to prisoners
  - resisting arrest, assault on a police officer, and obstruction charges, where a use of force has occurred
  - critical firearms discharges
  - complaints, dispositions
  - criminal and civil proceedings against officers
  - vehicle pursuits
  - pointing of firearms (if added)
  - disciplinary actions
- CPD must develop a plan for inputting historic data now in existing databases (Data Input Plan)
- CPD must develop a protocol for using the risk management system, subject to Department of Justice approval
- The protocol will include the following elements:
  - data storage, data retrieval, reporting, data analysis, pattern identification, supervisory assessment, supervisory intervention, documentation, and audit
  - the system will generate monthly reports
  - CPD commanders, managers and supervisors must review, at least quarterly, system reports and analyze officer, supervisor, and unit activity



- CPD commanders and managers must initiate intervention for officers, supervisors or units, based on appropriate “activity and pattern assessment” of the information in the system
  - intervention options are to include counseling, training, action plans; all interventions must be documented in writing and entered into the system
  - the data in system must be accessible to CPD commanders, managers and supervisors; they must review records of officers transferred into their units
- Schedule for system development and implementation:
    - 90 days from April 12, 2002: issuance of RFP, with DOJ approval
    - 210 days from RFP: selection of contractor
    - 12 months from selection of contractor: beta version ready for testing
    - 18 months from selection of contractor: computer program and hardware to be “operational and fully implemented”

## **2. Status**

According to the City’s August 12, 2003, MOA Status Report, the Employee Tracking Solution (ETS) is on track for December 2003 implementation. The City’s contractor, MEGG Associates, has installed the servers for the system as well as some of the software and other framework components of the system. CPD has adopted a “train-the-trainer” approach, and the initial training of the Information Technology Management Staff (ITMS) and other trainers is to take place in October. End-user training will take place after the trainers are prepared.

ITMS is also in the process of upgrading the Department’s desktop computers. This will allow all of the work stations in the Department to have access to the ETS system. New desktop computers will be installed in this next quarter. ITMS will upgrade the operating systems and office packages for those machines not replaced. This process is scheduled to be completed in December 2003.

One advantage that the City of Cincinnati has is that MEGG Associates is offering a commercial product, CRISNet Evalis, based on the system being developed at CPD. The company therefore has a great incentive for successful implementation of the Cincinnati system. The key features of Evalis, as advertised, are:

- a. Gather and Analyze Data
- b. Implement Early Warning Triggers
- c. Peer Group Analysis
- d. Multiple Reports
- e. Manage Citizen Complaints
- f. Chain of Command
- g. Integrate with NetRMS (MEGG Associates' RMS system)

CPD has submitted a working draft of the ETS Protocol to the Monitor for our comments and input. The Monitor Team will work with CPD and the Department of Justice, which must approve the protocol, on the development and approval of a final protocol.

CPD also is required to submit a Data Input Plan to the Department of Justice, describing the historic data contained in its current databases that would be entered and converted into the new ETS system. Pursuant to the ETS scope of work, CPD provided MEGG Associates with copies of its existing databases in March 2003 for conversion into the ETS system. Additional data will be provided to MEGG Associates as the project proceeds.

### **3. Assessment**

CPD is on track in its development of the risk management system required under the MOA. It has prepared a protocol for the system, describing the elements of the system and how it would be used. This protocol has been submitted to the Department of Justice for its review and approval. CPD provided a copy of the protocol to the Monitor Team prior to DOJ review, and we made some suggestions for additional detail regarding the reports that the system would produce and the thresholds and comparisons that will be used by CPD to trigger a review of officer or unit performance.<sup>7</sup>

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<sup>7</sup> To the extent that CPD revised the draft protocol before submitting it to the Department of Justice, the Monitor requests that CPD provide the Monitor and the other Parties with a copy of the protocol submitted to the Justice Department.

CPD is in compliance with the initial MOA requirements of issuing an RFP and selecting a contractor for the risk management system. The deadlines for implementation of the system have not yet been reached. In the interim, until CPD's ETS system is in place, CPD continues to implement its manual Department Risk Management System (DRMS). From January through June, 2003, 33 police officers and two supervisors were identified as meeting or exceeding the DRMS threshold, triggering an administrative review of the officers' performance.

## **B. Audit procedures [MOA ¶ 67-69]**

### **1. Requirements**

- CPD to develop a protocol for audits
- Regular audits of the citizen complaint process and Integrity audits of IIS investigations
- Meetings with prosecutors to identify officer performance issues

### **2. Status**

The Inspections Section prepared a report of its semi-annual audit of IIS investigations, dated August 8, 2003. According to this report, Inspections reviewed nine IIS investigations and found that "all documents, taped interviews and final reports were in compliance with the policies, procedures, and standards of the Cincinnati Police Department."

The Inspections Section also conducted its quarterly audit of the CCRP process. The audit, dated July 10, 2003, consisted of a review of the following criteria:

- Were the complaints logged into the CCRP database, and the proper documentation completed?
- Did each District/Section/Unit have complaint forms and feedback forms accessible to the public?
- Were complaint forms and feedback forms in Department vehicles?

- Were complainants notified of the outcome of the CCRP process, including whether corrective or disciplinary action was taken?

The audit found that all Districts/Sections/Units were complying with Department procedures regarding the CCRP process.

On August 18, 2003, the lieutenants of the Police Relations Section and the Inspections Section met with the City of Cincinnati Prosecutor and an Assistant Hamilton County Prosecutor to address any performance or accountability concerns. The recommendation from the meeting is to include in the 2003 in-service training a presentation by the City Prosecutor on current case law relating to criminal charges of Obstructing Official Business, and on probable cause and reasonable suspicion, and the difference between them.

### **3. Assessment**

The CPD has conducted the audits required by the MOA. The Monitor will evaluate the thoroughness of these audits in future quarters.

## **C. Video Cameras [MOA ¶¶ 70-72]**

### **1. Requirements**

The MOA requires that all patrol cars be equipped with mobile video recorders (MVR). These MVRs are to be used in the following situations:

- Mandatory activation of MVR for all traffic stops
- Recording of consent to search, deployment of drug sniffing canines, and vehicle searches
- Recording of violent prisoner transport, where possible
- Supervisors to review all tapes where there are injuries to prisoners, uses of force, vehicle pursuits, citizen complaints
- CPD to retain and preserve tapes for 90 days, or as long as investigation is open
- If stop is not recorded, officer to notify shift supervisor

- Periodic random reviews of videotapes for training and integrity purposes; supervisors are to keep a log book of these reviews
- Random surveys of equipment are to be conducted

## **2. Status**

Most of CPD's patrol cars are currently equipped with Kustom Signal Mobile Video Recorders that produce VHS tapes of video footage of motor vehicle stops.<sup>8</sup> Tapes are logged, stored and secured by supervisors at each of the patrol districts. Paper logs are used to identify the location of each tape. When a request is made to view a specific tape, the log entry is located and the corresponding tape is retrieved from the locked files. Tapes are then fast-forwarded to the place on the tape for viewing. Each District has its own procedure for reviewing tapes and logs are kept locally within the District. CPD provided the Monitor with examples of MVR documentation from each of the five districts.

CPD, recognizing the advancement in digital video, has opted to purchase digital video systems to replace the current VHS technology, which has aged in the current fleet. New equipment is being tested to replace the existing MVRs. Eighteen Kustom Signal Digital Eyewitness cameras have been ordered for pilot testing. A demonstration camera is currently being tested while the 18 are on order. According to CPD, the Department plans to purchase 260 digital MVRs, contingent on receiving the \$1.5 million funding required for the purchase. Some of the benefits of digital technology include:

- Quick access to video footage
- Ability to index video segments
- Ability to link video segments to electronic records
- Ability to transmit video segments via CPD's computer network
- Smaller footprint for storage

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<sup>8</sup> As noted in our Second Quarterly Report, about three fourths of CPD's patrol cars are equipped with MVR. CPD's procedures require that cars with working MVRs be used first before cars without MVRs. However, there are still situations where patrol and scout cars do not have working MVRs. For example, on a ride-along with a member of the Canine Unit, the Monitor was told that only one of 9 cars in that unit is equipped with MVR equipment.

Several issues will have to be addressed by CPD if it moves to digital MVRs:

- Court admissibility
- Continuity of evidence
- Security
- Back-end access
- Network support

### **3. Assessment**

The City is in partial compliance with this requirement.

CPD supervisors are required by procedure to review MVR tapes on a periodic basis. Some supervisors are viewing several tapes weekly, while others view only a few each month. Also, each District has a different way of documenting supervisors' review of tapes and their audits of MVR equipment. (District 5, for example, has developed its own form for documenting MVR review.) A standard approach should be developed for viewing, logging, storing, and recording the results. The purchase of digital video equipment will likely facilitate a more efficient procedure for review and handling of video.

### **D. Police Communications Section [MOA ¶¶ 73-74]**

The City is in compliance with these provisions. Since the Monitor's Second Quarterly Report was issued, the CPD reports the following steps to upgrade its police communications technology:

- Motorola is in the process of completing the infrastructure necessary to support a new 800 MHz radio system. The system is projected to come on line during the third quarter of 2004. The current location of the Police Communications Section, however, does not offer enough space to house the new equipment. To accommodate the system CPD has been presented the following options:
  1. Negotiations are ongoing for the purchase of an office/warehouse site to relocate Police Communications Section.

2. Renovation of the entire third floor of the 310 Ezzard Charles Drive facility, which is estimated to take 18-24 months once the space is vacated.
  3. Purchase of an alternative site located at Montgomery Road and Kennedy Avenue. Research is currently underway to determine the costs to purchase and renovate the facility.
- Replacement of the current 911 Phone System with a state of the art computer-based system is currently underway. On March 26, 2003, the Police Department signed a contract with the selected vendor, Cincinnati Bell/Palladium. The equipment has been manufactured and is in the process of being shipped to Cincinnati Bell for installation.
  - The Police Department has requested the City allocate funds to upgrade the current CAD system. The City has placed the CAD replacement on the Capital Improvement Program and has allocated \$2.5 million over three years beginning in 2003. The Communications Section is currently researching CAD replacement technology. The CAD RFP will be sent out in conjunction with CPD's Records Management System RFP later this year.

**E. Discipline [MOA ¶¶ 75-76]**

To assess compliance with the MOA and CA's provisions regarding discipline, the Monitor has requested that CPD provide the following information, if available:

1. Number of complaints by category for each quarter, and for each category, the number of complaints that were sustained.
2. Number of complaints by source of complaint (CCA, CCF, F17, OMI) for each quarter, and for each source the number of complaints that were sustained.
3. For sustained complaints, the disciplined imposed, e.g., the number of cases in which a written reprimand was issued, a suspension of up to three days, a suspension more than three days, terminations. We requested that the information be broken down by category of complaint or source of complaint,

if that were possible. If officers resigned while investigations were pending, we requested that information as well.

4. Statistics regarding the number or percentage of cases taken to a peer review panel, and the discipline upheld, reduced, or reversed by the panel.

The University of Cincinnati is currently conducting a study of discipline in the City, and has collected much of the information in the first three items above. CPD will be providing the information in the fourth item. The Monitor will review this information in the next quarter and report on compliance with the discipline-related provisions of the Agreement.

## **VI. Training**

### **A. Use of Force-Management Oversight and Curriculum [MOA ¶¶ 77-81]**

#### **1. Requirements**

This section of the MOA requires the CPD to:

- Coordinate and oversee use of force training to ensure that it complies with applicable laws and CPD policies
- Designate the Academy Director with responsibility for
  - the quality of training,
  - the development of the curriculum,
  - the selection and training of instructors and trainers,
  - establishing evaluation procedures,
  - conducting regular (semi-annual) assessments to ensure that the training remains responsive to the organization's needs.
- Provide annual use of force training for all recruits, sworn officers, supervisors and managers
- Have the curriculum and policy committee regularly review use of force training and policies to ensure compliance with laws and policies



## **2. Status**

As noted in previous reports, the Training Academy is responsible for reviewing all training needs and developing the training curriculum. The training staff ensures that all training curricula and activities comply with the applicable mandates, legislative changes and court decisions. The most recent review of the training curriculum took place on January 7, 2003.

Annual use of force training is taking place. The Monitor Team observed police recruit training and found that it is being done in a manner that is fully consistent with the requirements of the MOA. Members of the Monitor Team also spent time with defensive tactics training officers and discussed with them the scope of our use of force reviews. The trainers stated that both Command and Inspections Section officers frequently call upon their expertise with respect to use of force reviews.

Additionally, the CPD has disseminated a training summary to all officers that provides an overview of important policy changes that have occurred as a result of the MOA. This document provides employees with a ready reference and outline that identifies key elements and new requirements in the following procedures:

- 1) Procedure 12.110 – Handling Suspected Mentally Ill Individuals and Potential Suicides
- 2) Procedure 12.536 – Foot Pursuits
- 3) Procedure 12.140 – Canine Operations
- 4) Procedure 12.537 – Mobile Vehicle Recorders
- 5) Procedure 12.545 – Use of Force
- 6) Procedure 15.100 – Citizen Complaints
- 7) Force Incident Reporting Requirements

## **3. Assessment**

The CPD continues to show progress in this area and is largely in compliance with ¶¶77-81. The Monitor Team will continue periodically to observe CPD's training activities to determine that all ongoing requirements are being met. In our next site visit, we hope to observe defensive training exercises. In future reports, we will also examine CPD's documentation of its evaluation of the training curriculum and practices, as well as the methods

used to assess whether CPD training is responsive to the needs of the officers and the agency. The Monitor Team will observe classroom instruction and interview students to validate CPD's progress on this front.

**B. Handling Citizen Complaints [MOA ¶ 82]**

Nothing to report.

**C. Leadership/Command Accountability [MOA ¶ 83]**

Nothing to report.

**D. Canine Training [MOA ¶ 84]**

As we note above, the Monitor Team continues to dialogue with the Canine Unit on training and deployment issues. The focal point of our discussions remains the dynamics of canine tracks and running apprehensions, and whether officers have opportunities either to maintain closer control of their dog, or intervene before the dog has engaged once the suspect is located. We observed several training exercises and were impressed with the rigor of the training program.

**E. Scenario Based Training [MOA ¶ 85]**

**1. Requirements**

CPD is required to ensure that training instructors engage students in meaningful dialogue regarding particular scenarios, preferably taken from actual incidents involving CPD officers. The goal is to educate students regarding legal and tactical issues raised by the scenarios.

**2. Status**

During the course of the most recent site visit, the Monitor Team discussed the scenario-based training activities with training staff and reviewed examples of the scenarios being used for this training. It was noted that the scenarios represented a mix of incidents involving CPD officers as well as incidents from other agencies. The scenarios involving CPD officers depicted a wide

range of situations that involved tactical, ethical and legal considerations. We believe that these scenarios are very useful and appropriate examples of practical situations that officers can encounter in the course of their daily activities.

The scenarios also were used in roll-call training, as evidenced by attendance at roll call and direct observation of the training by the Monitor Team. Supervisors led the discussion, encouraged participation and called on officers to share their observations regarding the scenario.

### **3. Assessment**

The City is in substantial compliance with this provision of the MOA. Training staff has developed a number of training scenarios based on incidents involving CPD personnel and these are being disseminated to the patrol supervisors for follow up in roll-call training sessions. It also appears that an ongoing effort is being made to identify incidents involving contemporary issues and training needs so that these can be readily shared and used by CPD personnel in this training endeavor.

It will be necessary for the Monitor Team to attend training at the Academy to confirm these scenario-based incidents are also being used in that training setting. Random inspection activities also will be periodically conducted of roll call and Academy training activities to confirm this effort is continued.

#### **F. Revised Training Based on Review of Civil Lawsuits Pertaining to Officer Misconduct [MOA ¶86]**

CPD is in compliance with these provisions. CPD held its quarterly meeting with the Law Department on July 10, 2003. The Monitor Team attended a brief portion of the Law Department's civil liability training for sergeants and lieutenants. The program included an understanding of the elements of a cause of action, supervisor liability, defense theories, and how to avoid liability.

#### **G. Orientation to the MOA [MOA ¶87]**

The City is in compliance with this provision. Initial training on the MOA was conducted for all employees in July 2002. Copies

of the MOA were provided to the employees at that time. As new policies have been adopted to comply with the MOA, CPD has included them in Staff Notes and implemented them through in-service training. As noted in Section A above, CPD also has recently disseminated a training summary to all employees that provides an overview of policy changes associated with the implementation of the MOA provisions.

## **H. FTO Program [MOA ¶¶ 88-89]**

### **1. Requirements**

The MOA requires the CPD to develop a protocol to enhance the FTO program to include:

- The criteria and method for selecting FTOs
- Setting standards that require appropriate assessment of an officer's past complaint and disciplinary history prior to selection
- Procedures for reappointment and termination of FTOs at the Training Academy Director's discretion
- Reviewing FTOs at least bi-annually with recertification dependent on satisfactory prior performance and feedback from the Training Academy.

### **2. Status**

Monitor Team members met with the FTO Coordinator and other training staff to review progress in this reporting period concerning revisions that were made in Procedure 13.100 (Field Training Officer Program). The Team began its review of the FTO protocols and practices by meeting with training staff and the FTO coordinator, then spending time in the field with officers, supervisors and managers at the District level.

Some of the progress noted in this Report began during the previous quarter, but was not completed or documented until July 2003. However, that progress is noteworthy and CPD is to be commended for the work that has been accomplished to date.

One particular item of note is the decision to place ten current FTOs on inactive status based on the FTO Review Board's

recommendation, following its most recent bi-annual meeting. The officers were notified of this change in their FTO status prior to the July 21-23 annual FTO training and were directed to not participate in the training, given their change in status. During the August site visit, the Monitor reviewed the individual status of these officers and found sound reasons for the recommendations and subsequent decision to “deactivate” them as FTOs. The reasons ranged from missing court several times to sleeping on duty while working with a trainee.

The Monitor does request that for future meetings of the FTO Review Board, minutes of its meetings be provided, such as those that are provided from the Training Committee. This provides the Monitor with documentation of important activities and will result in an accurate historical file of CPD’s progress that is not dependent on the recollection of particular individuals, should there be personnel changes in the future.

There appears to be some reluctance on the part of CPD to use terms such as “de-certify” for the actions taken regarding FTOs who are not meeting standards. CPD may want to evaluate whether placing an FTO on “inactive status” sends a message that the officer has retained his or her FTO designation. Institutional support for termination of participation in this program (or de-certification) will be reinforced when written standards are established that support the criteria used for selection of FTOs. Such standards provide clear expectations to all FTOs and other Department members regarding what is required to be an FTO, what the ongoing expectations are, and how to remain in good standing in this program. These also provide objective, measurable standards by which the selection criteria can be evaluated. Due to staffing issues this reporting period, these written standards were not developed as planned, but staff have told us the standards are scheduled for attention during the next quarter.

The Department’s actions to maintain stronger professional standards for FTOs send an important message throughout the organization. Based on conversations the Monitor Team had with patrol officers and supervisors during ride-a-longs and other activities, this message was noticed in the field. Once the written standards have been completed and distributed, it will become even more evident that the FTOs are considered important role models

and communicators of organizational values, and they will be held accountable for maintaining those standards.

The CPD should also consider how to convey the message that all patrol officers who meet the FTO standards are welcome to apply. Discussions with field officers revealed that not all eligible personnel feel they can or will be considered in the selection process for FTOs. This may stem from a lack of knowledge and familiarity with the selection criteria, as there is no formal application process for officers who are interested in becoming FTOs. The development of an open, well-advertised, competitive selection process would support CPD's commitment to inclusiveness and excellence in the FTO program.

### **3. Assessment**

Commendable progress in the FTO program has been made in recent months. Training staff and the FTO Coordinator have taken a variety of actions to refine and improve the program. Criteria have been identified to evaluate the suitability of potential and existing FTOs. A formal review process was launched that helped identify existing FTOs who did not appear well suited for that role. And training staff followed through on the "deactivation" of ten FTOs following the reviews that were conducted of their individual performance.

The amount of staff time available to develop and implement changes, while at the same time managing the current demands of the FTO program, is a matter of concern to the Monitor. This concern was heightened during this reporting period, when the single FTO Coordinator, who already had collateral duties at the Training Division, was transferred to a supervisory patrol assignment while attempting to maintain his FTO coordination duties. We note that the Coordinator was subsequently returned to full-time duty at the Training Academy, but we encourage CPD to review its overall staffing support for the FTO program in light of the significant impact this program has on the quality of its patrol operations.

While significant progress has been made, CPD is not yet in full compliance with the provisions of Paragraphs 88-89, especially with respect to documentation and written standards. We will

continue to review and evaluate supervisory and management oversight of this area, including the performance evaluation system for FTO incumbents and applicants.

**I. Firearms Training [MOA ¶¶ 90-91]**

Nothing to report this quarter.

## **CHAPTER THREE. COLLABORATIVE AGREEMENT**

Through the Collaborative Agreement (CA), the Parties endorsed community problem-oriented policing (CPOP) as the framework for policing in the City of Cincinnati. The Parties are jointly accountable under the CA for implementing CPOP.

The CPD has asked the Monitor to more concretely identify the expected outcomes of CPOP implementation and the data and benchmarks the Monitor Team will use to measure progress in implementing the CA. Thus far, the Monitor has focused predominately on assessing compliance based on the specific items described in subparagraphs 29(a) through (q) and the timeframes laid out in the CA. We believe that as work progresses on the CA, it will be useful for the Parties and the Monitor to identify “outcomes” that are consistent with the goals of the CA. We have suggested (and the Parties have agreed) that during the next quarter we should meet to begin this process.

Towards that end, we ask the Parties to consider the following issues, which may help in identifying more specific outcomes for the CA requirements.

- In the Monitor’s first meeting with Chief Streicher in January, the Chief described his vision of CPOP for the City. He described a police agency fully engaged with the community, utilizing a problem-solving process around community crime and safety problems. He also stated that a special unit approach to CPOP (similar to CPD’s early efforts in the 1990s at community policing) would be “a mistake.” The Monitor agrees that the CA calls for broad participation throughout CPD, as absent full engagement, the culture and crime control approach of the majority of the Department is likely to remain the status quo. As a result, we ask CPD to consider the steps it will take and an appropriate timetable to ensure all Patrol officers (not just the few CPOP team members), as well as the rest of the Department, participate fully in an analytic problem-oriented policing approach to community crime and safety problems.
- The Plaintiffs anticipate greater participation in collaborative problem solving with the hiring of a Partnering Center



executive director and permanent staff. However, even with a fully staffed Partnering Center, Partnering Center staff can likely only participate in one or two problem-solving efforts in each of Cincinnati's 52 neighborhoods through 2004. In each police District, there are multiple locations with repeat calls for police service. For instance, in District 3 there are over 100 specific addresses and street corners with nine or more police calls for service in the last eight months. Is it the Plaintiffs' expectation that analytic problem solving should only occur with Partnering Center staff? If all problem solving is to be done in tandem with the Partnering Center, how should these additional locations be addressed? Also, if only CPOP officers engage in analytic problem solving, will the CPOP officers' engagement be enough to bring about the kind of changes for the community and the police anticipated in the CA?

## **I. Implementation of CPOP [CA ¶29]**

### **1. Requirement 29(a)**

The City, in consultation with the Parties, shall develop and implement a plan to coordinate the work of City departments in the delivery of services under CPOP.

### **2. Status**

In the second quarter of this year, the Parties formally adopted a CPOP coordination plan, entitled the "City of Cincinnati Plan for Community Problem Oriented Policing." Since then, liaisons from the Departments of Buildings and Inspections, Public Services, Community Development and Planning and Health received training on their roles and responsibilities as resources to the Problem Coordinators (the CPD member assigned to a CPOP team). Another city department, Parks and Recreation, is soon expected to identify department liaisons for problem solving activities.

### **3. Assessment**

The City continues to make progress in this area and is in partial compliance with the CA requirement. In the next quarter, the Monitor would like the Parties to report on the quality, timeliness, and results of inter-agency collaboration vis-à-vis the projects undertaken by the pilot CPOP teams.

#### **1. Requirement 29(b)**

The Parties will develop a system for regularly researching and making publicly available a comprehensive library of best practices related to CPOP.

#### **2. Status**

The Department's CPOP website at <http://cagisperm.hamilton-co.org/cpop> is still in draft form, but is expected to be accessible to the community in this quarter. The website will also serve as the Department CPOP tracking system (see 29(m) below). CPOP officers in the pilot areas have been trained in its use and have populated the website's tracking system with eight of the pilot teams' problem solving initiatives.

The website is expected to become a clearinghouse of best practices for tackling crime and safety problems. Currently, the website contains multiple links to resources for searching out practices by other agencies.

### **3. Assessment**

We believe that the website has great potential for use as a research tool. As noted in the Monitor's Second Quarterly Report, compliance will depend on how quality control of best practices is maintained in the system and on use of the system in effective problem solving.

As an initial test of the website as a research tool, the Monitor requests that CPD determine whether any of the CPOP officers working with the pilot teams used the website to conduct any research on the analytic and strategic approaches other cities have used on similar crime problems. It would be useful to know:

- What research links did the officers use?
- What efforts from other policing agencies did the CPOP officers review?
- Which were the most helpful in the analysis, response and assessment stages of their pilot team's efforts?
- If some officers used the website to conduct searches, was it easy to use? If some did not, what else would facilitate officers' use of the website for best practice research?
- Are the research links of value? Would other links be more valuable?

### **1. Requirement 29(c)**

The City, in consultation with the Parties, shall develop a continuous learning process through the CPD. Experiences with problem solving efforts in the field will be documented and disseminated throughout the CPD and made available to the public. Problem solving will continue to be emphasized in (but not be limited to) academy training, in-service training, and field officer training.

### **2. Status**

The CPD provided website training for CPOP pilot team officers this past summer. This September, District Commanders received training about the website. In the CA Status Report, the Parties suggest that further training should wait until the Community Partnering Center is operational. In our Second Quarterly Report, we recommended interim training that the CPD could conduct that would enhance its ability to be an effective problem-solving partner. We believe that this training is still important: training for CPOP officers in researching best practices; training for crime analysts in hot spot analysis; and training for Street Narcotics personnel in turning around drug hot-spots (including landlord training). (See Monitor's Second Quarterly Report, pp. 61-62, for greater detail.)

Another aspect of continuous training is exemplified in the work of the Drug House Task Force (DHTF). The DHTF sent 30 notification letters to property owners because felony drug activity was alleged at their properties. The owners were given contact

information for evictions, and in September, the DHTF will offer an informational class for rental property owners.

### **3. Assessment**

The City has made progress on this CA requirement, but is not yet in full compliance. We look forward to seeing continuing attention to training with a problem solving emphasis.

We commend the DHTF for its work. The informational class for rental property owners is a positive development, and the Monitor requests a copy of the curriculum and information on the criteria used for inviting property owners to the class. We also encourage the task force to consider training on non-discriminatory tenant screening practices, as it is also a “best practice” in reducing the repetitive cycle of renting to drug dealing tenants and having to evict them.

#### **1. Requirement 29(d)**

The Parties will research information on how problem-solving is conducted in other police agencies and disseminate research and best practices on successful and unsuccessful methods for tackling problems. The Parties will also disseminate information on analogous problem solving processes used by other professions.

#### **2. Status**

This quarter, the CPD added additional links to the draft website. The links are to other cities’ community-oriented policing (COP) and problem-oriented policing (POP) programs. These sites generally describe their Departments’ mission and vision related to COP and POP, rather than detailed and specific crime and safety best practices.

### **3. Assessment**

The Parties are in partial compliance with this requirement. We encourage the Parties to refine their collection of best practices to those that have been evaluated. It is these that will most assist the website’s users in tackling specific crime and safety problems.

CPD and the Parties should be culling websites for specific, successful approaches that show quality analysis, tailored responses, and valid assessments, and these should be shared and disseminated in the Department.<sup>9</sup> Once that work is done, perhaps these could be placed in a searchable database on the site under a heading “best practices.” It would then be clearer to the user that these should be reviewed when engaging in problem-solving.

Once the Partnering Center is up and running, its staff can add community-driven examples of problem-solving efforts based on effective practices (those that show quality analysis, tailored responses, and valid assessments). These are likely to be found, for example, in the archives of two well-known and seasoned community organizations: Chicago Alliance for Neighborhood Safety and the Citizens’ Committee for New York.

## **1. Requirement 29(e)**

The Parties, consistent with the Community Partnering Center, will conduct CPOP training for the community and jointly promote CPOP.

## **2. Status**

As reported in our Second Quarterly Report, the Parties agreed to a “CPOP Action Plan” on June 17, 2003. This plan describes the problem solving process, how problems will be identified, and how problems will be addressed through the coordinated work of the City and the Community Partnering Center, by the formation of CPOP teams. Each CPOP team will consist of community members, a staff person from CPD who will be the “problem coordinator,” and an outreach worker from the Community Partnering Center.

Thus far, the Partnering Center has secured pledges to support an annual budget of approximately \$1 million to fund a professional staff through the five-year life of the CA. The Partnering Center is in final negotiations to establish the Friends of the Collaborative, a group that will assist in spreading CPOP

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<sup>9</sup> The Herman Goldstein International Award in Problem Solving winners and finalists are a good place to start.

citywide. The Partnering Center Board expects to select an executive director by the end of October, and is projecting a staff of 19 in 2004 (four administrative staff and 15 outreach workers).

In this quarter, the City, along with the interim staff at the Partnering Center, continued to work with the pilot problem-solving teams in Madisonville, Evanston, Walnut Hills, Over-the-Rhine, Avondale and the West End that were initiated by Cincinnati Community Action Now (CCAN). CPD also provided training to eight additional neighborhood groups this summer, with the training presented by CPD officers. The training for the eight additional neighborhood groups centered on the SARA process,<sup>10</sup> as the Parties have not yet agreed upon a joint CPOP curriculum.

Plaintiffs and the City disagree about whether some of this additional training should have occurred. As of late August, no further training was scheduled. Thus far, outreach workers from CCAN are still the main partners, although they are now, on an interim contract basis, working for the Partnering Center and have done a good job with limited resources. While the outreach workers attend meetings with the initial six trained community groups, they are trying to meet the additional demands of the eight newly trained groups.

At the Monitor's urging, in mid-August the Plaintiffs attended one of the SARA trainings. Plaintiffs had been waiting to have the Partnering Center's executive director in place before collaborating with the Parties on a joint CPOP curriculum. However, the executive director may not be in place (nor permanent staff) for a number of months. Fourteen neighborhoods, many with the highest victimization rates in Cincinnati, have now received some training, and the residents involved have either begun some problem solving activities or seek to form problem solving groups. If the Parties delay too long work on the content of CPOP training and the practical methods for forming CPOP teams and applying the SARA analysis, they may miss participating in the earliest efforts to turn around crime problems in those parts of the City where crime problems are some of the most serious. Without each of the Parties' full attention, analysis of safety problems is not likely

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<sup>10</sup> The SARA process is a type of problem-solving model. SARA stands for Scanning, Analysis, Response, and Assessment.

to be as robust as the vision documented in the CA. At this time, the Partnering Center's interim outreach workers, for good reason, have not been able to fully represent the Partnering Center, because it is not truly in place. Since 14 neighborhoods have begun problem solving, it is incumbent upon the Parties themselves (even without a Partnering Center executive director) to ensure that the problem-solving teams are moving in the right direction. Otherwise, approaches and dynamics will become set and difficult to change as time passes.

To facilitate this process, the Monitor has recommended a roundtable among the Parties to work on the content of the CPOP training, and on the SARA problem solving process to be used by the CPOP teams. We would like to hold this meeting in November or early December at the latest.

### **3. Assessment**

The Parties are not yet in compliance with this requirement. The CPD has made progress on training; however, the Plaintiffs and the FOP must participate more fully by attending CPOP team meetings and begin discussions with the CPD on the content of future training and add-on training for the current groups.

#### **1. Requirement 29(f)**

The Parties shall establish on-going community dialogue and structured involvement by CPD with segments of the community, including youth, property owners, businesses, tenants, community and faith-based organizations, motorists, low income residents, and other city residents on the purposes and practices of CPOP.

#### **2. Status**

While a coordinated dialogue in conjunction with the Community Partnering Center has not yet been developed, CPD, the Partnering Center and various other entities have engaged in a number of efforts to interact with the segments of the community identified in the CA. Examples of these efforts follow:

- The CPD, as noted earlier, will conduct informational meetings with property owners concerning their properties' felony drug problems.
- The CPD is participating in 14 CPOP teams; some are with low-income residents in highly victimized neighborhoods. Some of the CPOP teams have begun projects with business owners on crime in front of their businesses.
- The Partnering Center's interim outreach workers are participating in many of the CPOP teams as well.
- The City's Human Relations Commission offers in-school youth and community members presentations on police vehicle stops, and the CPD developed a "What to Do When Stopped by the Police" brochures.
- CPD participates in Community-Police Outreach Festivals in city neighborhoods and CPD recruiters attend these events to interest youth and adults in police careers.

### **3. Assessment**

While the City has begun outreach efforts and focused interventions, the Parties jointly are not yet in compliance with 29(f).

The CPD has clearly made some strides on this CA requirement. We recognize that it is difficult for the Parties, absent a more fully operational Partnering Center, to jointly develop with the CPD structured police dialogue with specific Cincinnati populations. At a minimum, however, in this quarter the Plaintiffs and the FOP should review the "What to Do When Stopped by the Police" brochure and any accompanying lesson plan. The Monitor would also like a copy of the brochure, along with a copy of the Human Relations Commission's "Do it Right" videotape.

### **1. Requirement 29(g)**

The Parties shall establish an annual award recognizing CPOP efforts of citizens, police, and other public officials.



## **2. Status**

The Parties met in late August to discuss a framework for an Annual CPOP award. These preliminary discussions focused on the roles and responsibilities of each Party and a timetable for steps towards implementation.

## **3. Assessment**

The preliminary discussions are a good start, and we hope to see additional progress in the next two quarters. The Parties are not yet in compliance with this requirement.

### **1. Requirement 29(h)**

The City, in consultation with the Parties, shall develop and implement a communications system for informing the public about police policies and procedures. In addition, the City will conduct a communications audit and a plan for improved external communications. The communications strategy must be consistent with Ohio Law.

## **2. Status**

As we noted in our last report, CPD policies and procedures are accessible from the City website and will be available on the CPOP website. The Monitor still awaits a copy of the communications audit, which was completed earlier this year.

## **3. Assessment**

The City is in partial compliance with this section of the CA. Policies and procedures are available to the public on the website, and as joint training with the community occurs, questions about specific police policies can be answered in community meetings as well. Without a copy of the communications audit, the Monitor cannot report on the results of the communications audit this quarter.

### **1. Requirement 29(i)**

The CPD will create and staff a Community Relations Office to coordinate CPD's CA implementation.

### **2. Status**

In our First Quarterly Report, we noted the establishment and staffing of a Community Relations Unit (CRU). The CRU is a division of the Police Relations Section. The CRU Manager reports to the Executive Manager of Police Relations, S. Gregory Baker. Mr. Baker's responsibilities include being the Compliance Coordinator for the MOA and for implementation of the CA. The CRU Manager assists Mr. Baker in coordinating the implementation of the CA.

### **3. Assessment**

The City is in compliance with this requirement.

### **1. Requirement 29(j)**

The Parties shall describe the current status of problem solving throughout the CPD through an annual report. Each Party shall provide information detailing its contribution to CPOP implementation. The CA established August 5, 2003, as the deadline for completion of the annual report. The Parties and the Monitor agreed to extend the deadline to September 5, 2003.

### **2. Status**

We received the Parties' Annual CPOP Report in early September. As we requested in our prior Reports, the annual CPOP report catalogues efforts prior to August 2, 2002, as well as efforts in the year since, so that the Parties have a baseline for comparing measures taken after the approval of the CA. The report describes CPD's early community policing efforts, including assignment of a neighborhood officer to each of the City's 52 neighborhoods, a Citizen and Student Police Academy, Citizens on Patrol, training of officers in community policing, and adoption (although not implementation) of a community policing strategic plan. With respect to work undertaken since August 2002, the report

describes the efforts of the pilot CPOP teams, as well as several recent City/CPD initiatives, such as the draft CPOP website, Community Response Teams (undercover and uniformed two-day deployments in selected neighborhoods), the Code Enforcement Response Team, the Drug House Task Force, Operation Litterbug Raid, partnership with the Cincinnati Human Relations Commission, Youth Lighthouse, Web Wise Kids, and outreach programs for the Russian community in Cincinnati's Roselawn neighborhood.

The description of efforts by each of the first six communities that received SARA training shows some initial steps at identifying problems of community concern. The neighborhoods groups and the problems they identified for action are shown in the chart below.

<b>Neighborhood</b>	<b>Problem Identified for Action</b>
Evanston	Youth loitering/drug sales on certain streets including the Five Points Corner
Over-the-Rhine	Drugs, loitering, and violence at a gas station
The West End	Drugs, loitering, litter, and unsupervised youth
Walnut Hills	Drug dealing in certain locations; problematic local liquor store; neighborhood beautification
Avondale	Loitering and drug dealing at and around a convenience store
Madisonville	Loitering at Bramble and Whetzel; beautification of Bramble and Whetzel intersection

Additional comments about these problem-solving projects can be found in this Report in sections 29(k) and 29(m).

We highlight two of the City's recent initiatives to share in greater detail as illustrations of efforts consistent with the CA. The Youth Lighthouse represents the culmination of a four-year effort to establish and fund a youth diversion program for first-time misdemeanor arrestees. Street outreach personnel and a police officer will make home visits to these youth and offer diversion away from the criminal justice system if skill building opportunities and social service referrals are accepted by the youth and his/her family. In a second promising initiative, the CPD will be offering a Citizens Police Academy for Russian immigrants. In this Academy, District 4 CPOP team members will present crime-prevention and self-defense advice. We hope that efforts illustrative of high quality problem solving also will find their way into the curriculum as a way of encouraging this recent immigrant group to collaboratively engage in problem solving on crime problems of concern.

### **3. Assessment**

With the submission of the Annual Report, the Parties are in compliance with this CA requirement. We commend the Parties for documenting the early efforts at community policing and the more recent transition to CPOP.

In subsequent reports, we would request greater detail in descriptions of community problem-solving efforts or initiatives, including the specifics of analysis (data collected and conclusions drawn), best practices researched, tailored responses (based on the analysis), and any assessment used or proposed (measures used, specific comparisons of before and after measures to show the exact extent of impact, and information collected for the before and after assessment). With these additional details, we can not only assess the thoroughness and effectiveness of the Parties' problem-solving efforts, but we can include particularly noteworthy examples of problem solving in our Monitor Reports.

#### **1. Requirement 29(k)**

CPD District Commanders and Special Unit Commanders or officials at comparable levels shall prepare quarterly reports detailing problem-solving activities, including specific problems addressed, steps towards their resolution, obstacles faced and recommendations for future improvements.

## **2. Status**

CPD District and Special Unit Commanders have not yet prepared quarterly problem-solving reports. However, at the September 18, 2003 all-Party meeting, CPD provided the Monitor with a description of the process and format to be used for these reports. In addition, CPD has included information from eight of the problem-solving teams on the CPOP website. We reviewed the eight problem-solving reports in the site database and find that the problem-solving activities in the reports lack a level of detail and accuracy to judge progress towards compliance. The *actual* activities accomplished may be more robust, but the reports describing them are often too sketchy.

We recognize that these eight reports are CPD's first efforts to populate the website, and are just a sample of what the system is able to convey. In Appendix 2, we offer our review of these write-ups in an effort to assist the Parties in creating a database of problem-solving activities that will be most useful to its users.

Some of our concerns over the reports can be resolved with guidelines for data entry, and/or sharing of a "model" project report containing multiple examples of evidence at the different stages of the problem-solving process. However, CPD and the Parties may also need to pay additional attention to whether the CPOP teams engaged in analysis and research of best practices. Without these, the responses chosen may be based more on what "feels right" than on what has a high chance for success. Problem-solving projects should tell a full story about the problem so that future users can rely on these for ideas, comparisons, and tested practices of approaches that work and of approaches that do not work.

## **3. Assessment**

CPD is not yet in compliance with this CA requirement. We look forward to receiving the quarterly problem-solving reports in this next quarter (by CPOP teams, District Commanders, and Special Unit Commanders), with sufficient evidence of quality analysis, tailored responses, and assessments of impact. Moreover, although the CPOP website's problem-solving reporting system requires refinement, we have confidence that in the coming quarter CPD and the other Parties will devote time and attention to it. We

expect the Parties, particularly at this beginning stage, to read each of the reports so that refinement is timely.

In the next quarter, the Monitor will report on the actual CPOP team projects. We are not able to do so in this Report without the information described above.

### **1. Requirement 29(l)**

The Parties will review and identify additional courses for recruits, officers and supervisors about the urban environment in which they are working.

### **2. Status**

According to the CA Status Report, the Parties wish to wait until the Partnering Center is up and running before work is begun on this CA requirement.

However, in our discussions with several of the ACLU Advisory Board members, they expressed an interest in facilitating interaction between police recruits and the community, as well as interaction between officers newly assigned to a District and the residents and organizations located in that District. These efforts would be fully consistent with the CA requirements, and we encourage the Parties to follow up on these ideas.

### **3. Assessment**

While the Parties are not in compliance with this section of the CA, the Monitor hopes that progress will be made on this requirement in the fourth quarter of 2003. A first step would be for the Plaintiffs to have the Advisory Board members meet with the District Captains and with Academy commanders.

### **1. Requirement 29(m)**

The Parties, in conjunction with the Monitor, shall develop and implement a problem tracking system for problem-solving efforts.

## **2. Status**

As noted in 29(k), eight problem-solving reports are now in the system and available for review at <http://cagisperm.hamilton-co.org/cpop/default.aspx>. The tracking system at this site contains one report from District 1, two from District 2, one from District 3, three from District 4, and one from District 5. A great deal of work has gone into the development of the draft website. We recognize that it is a work in progress, and we believe that additional modifications will enhance its usefulness as a reporting system, problem tracking device, and a resource to others in the community, the City, and other cities. In that spirit, and in our light of our role under this CA provision, we have outlined below several suggestions for modification.

In the Scanning menu, several additional reporting fields would be useful:

- The type of property where the problem is occurring (e.g., a convenience store, gas station, a privately owned apartment building)
- The type of place the problem is occurring (e.g., the sidewalk in front of the property, inside the property, behind the property, in the property's parking lot)
- The name of the owner(s) of the property
- The property manager (if any) of the property
- Contact information for the owner and the property manager

Throughout the tracking report are boxes titled "comments." For the most part, these are left blank or the information in them is very generic. Changing the title of these boxes to "Give Specifics" or "Provide Examples" may guide users to input more solid evidence, increasing the likelihood of quality problem solving.

We also note here that the website should reflect the collaborative nature of the CA. The website's home page has several statements about CPOP and its goals that should be more inclusive, to match the goals of the CA. For example, the website homepage, as of September 9, 2003, states:

- “The goal is to form working partnerships between residents and the City of Cincinnati under the direction of the Cincinnati Police Department.”
- “City employees and the community work together, under the direction of the Cincinnati Police utilizing a consistent process of Scanning, Analysis, Response and Assessment (SARA) to resolve problems.”

In each case, the Parties may want to reference the Partnering Center and the Parties to the CA. In addition, the draft website currently contains a CPOP training schedule for additional community groups through October 17, even though training beyond August was postponed.

### **3. Assessment**

As we noted in 29(k), much work has been done on the website and we are confident that the Parties in this coming quarter will strive to improve the website as an effective tracking system of specific problem-solving efforts and CPOP progress. In addition, as we move forward in the coming months, we would like more information regarding the capabilities of the system to aggregate the data in the system and provide reports and analyses for system users.

While the problem tracking system has been developed, its implementation is just beginning. For this reason, the Parties are in partial compliance with this requirement.

#### **1. Requirement 29(n)**

The City shall periodically review staffing in light of CPOP. The CA requires ongoing review of staffing rather than a review by a certain deadline.

#### **2. Status**

The CPD reports that it regularly reviews staffing requirements in order to match workload requirements with resources. However, as we noted in earlier reports, CPD has not



provided the details of how it does these reviews and the results of these reviews.

The Monitor requests that the CPD share the current formula it uses to determine District staffing, along with the numbers that accompany application of the formula in each of the five Districts.

### **3. Assessment**

The Monitor is unable to assess compliance with this CA requirement based on the information provided.

#### **1. Requirement 29(o)**

The City shall review, and where appropriate, revise Police Department policies, procedures, organizational plans, job descriptions, and performance evaluation standards consistent with CPOP.

#### **2. Status**

In this quarter, the CPD Human Relations Section began a review of job descriptions and will follow with a review of performance evaluation systems for those jobs. In connection with this effort, at the request of the City's compliance coordinator, the Monitor Team provided examples of police agencies whose personnel evaluations were likely to reflect their agency's commitment to community and problem-oriented policing.<sup>11</sup> In the next quarter, the Monitor would like to see additional detail on this effort.

The performance appraisal system currently utilized for sworn officers has been in place for at least 25 years. It is consistently criticized throughout the organization as being "ineffective" and "meaningless" (these are comments that were frequently made by members of the CPD, at all ranks). There has been at least one previous effort to revise this system, and the proposal was never

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<sup>11</sup> We suggested that CPD review personnel evaluations from the following police agencies, as these agencies might be likely to have made modifications based on community and problem-oriented policing: Santa Ana, CA; Lynn, MA; Fremont, CA; Fontana, CA; San Diego, CA; El Monte, CA.

acted on. During our site visit, CPD was unable to locate any documentation regarding the proposal.

The evaluations for all sworn officers are completed at the same time, with all of them being done at the end of the calendar year. Because supervisors have to complete these in bulk, and at a time of year when other activities tend to take precedence, Human Resources staff noted that this contributes to a lack of quality and thoroughness. In contrast, evaluations for civilian police personnel are completed at the time of their anniversary (hiring or promotional appointment dates), so these evaluations are spread out throughout the year. Senior staff in Human Resources indicated that the quality and thoroughness of these evaluations are markedly better than those for the sworn personnel.

### **3. Assessment**

The City is not yet in compliance with this requirement. Towards compliance, the Monitor would like CPD to report on its efforts to research how other agencies use job descriptions, performance measures, and performance appraisal systems in setting and monitoring community and problem-oriented policing expectations.

In addition to examining and incorporating performance standards and expectations that reinforce the organization's values and commitment to community policing and problem solving, there are steps that can be readily taken to improve the quality of the existing performance evaluations. One is to change the performance appraisal cycle for sworn officers so that they are completed on a rolling basis (e.g., at the time of the individual's anniversary date, and whenever a transfer takes place). This would enable supervisors to be more comprehensive in their reviews and spend more time providing important personnel feedback. Such a change should be accompanied by management and supervisory training to ensure that those responsible for these rating instruments have the tools to do a better job and clarity regarding the improvements that are expected.

## **1. Requirement 29(p)**

The City shall design and implement a system to easily retrieve and routinely search (consistent with Ohio law) information on repeat victims, repeat locations, and repeat offenders. The system shall also include information necessary to comply with nondiscrimination in policing and early warning requirements.

## **2. Status**

As noted in our prior reports, the City states that it expects to meet this provision through the acquisition of a new Records Management System (RMS) and Computer Aided Dispatch (CAD) system, as the current systems cannot produce repeat offender, victim and location information. The City contracted with Gartner Consulting and is reviewing design specifications for a Request for Proposals (RFP), with expected publication in the fourth quarter of 2003.

In our meeting with CPD Crime Analysis, it became clear that CPD's current system can produce repeat location information, although it may not do so in the most expeditious fashion. For instance, one can currently query the system to produce, for each District, a list of specific repeat locations and the number of times the police have been called to each of these specific locations. As a result, one can learn such specifics as:

- District 5 police responded to one supermarket 164 times in the first seven months of the year;
- District 4 police responded to one shopping center 434 times, one apartment complex 232 times, and another apartment complex 78 times in the first seven months of the year;
- District 3 police responded to one apartment complex 219 times in the first seven months of the year;
- District 2 police responded to one street corner over 100 times in the first seven months of the year;

- District 1 police responded to one gas station (the gas station identified in Over-the-Rhine's CPOP team POP project) 227 times in the first seven months of the year.

In the introduction to this Chapter, we discussed the importance of repeat location analysis and of clarifying expectations about these repeat locations. Each of the Districts has over 60 repeat locations. We believe it is important for CPD to share data on the extent and addresses of repeat locations with the CPOP teams, so that the CPOP teams can use that data in prioritizing which problems and locations to address. In the coming quarter, the Monitor will meet with the Parties to clarify expectations concerning problem solving activities under the CA. In advance, we would like the Parties to consider what kind of problem solving activities officers (other than CPOP officers) should be expected to do with respect to those repeat locations not selected by CPOP teams, but where the police are constantly called.

### **3. Assessment**

In our First Quarterly Report, we requested that CPD provide a detailed description of the capabilities of its present systems. We believe this is important, as installation of new systems may be more than a year away, yet there may be retrievable information in the current systems to aid in establishing priorities for police and collaborative problem solving. We also ask that the CPD provide a draft of the RMS/CAD RFP for our review once initial design specifications are drafted. In the interim, the City is not yet in compliance with this CA requirement.

#### **1. Requirement 29(q)**

The City shall secure appropriate information technology so that police and city personnel can access timely, useful information to problem-solve (detect, analyze, respond, and assess) effectively. The CA established February 5, 2003, as the deadline for development of a procurement plan, April 5, 2003, to secure funding, August 5, 2003, to procure systems, and August 2004 to implement any new purchases.

## **2. Status**

We refer the Parties to the Status section of 29(p) of this Report.

## **3. Assessment**

The City has not met the deadlines in the CA for compliance with this requirement.

## **II. Evaluation Protocol [CA ¶¶ 30-46]**

### **1. Requirements**

The CA calls for a system of evaluation to track attainment of CA goals. This tracking serves as a “mutual accountability plan.” According to the CA, “[t]he term ‘mutual accountability plan’ is defined as a plan that ensures that the conduct of the City, the police administration, members of the Cincinnati Police Department and members of the general public [is] closely monitored so that the favorable and unfavorable conduct of all is fully documented and thereby available as a tool for improving police-community relations under the Agreement.”

The Evaluation Protocol must include the following components:

- Surveys
  - of citizens, for satisfaction and attitudes
  - of citizens with police encounters (neighborhood meetings, stops, arrests, problem-solving interactions), for responsiveness, effectiveness, demeanor
  - of officers and families, for perceptions and attitudes
  - of officers and citizens in complaint process, on fairness and satisfaction with complaint process
- Periodic observations of meetings, problem-solving projects, complaint process; with description of activity and effectiveness
- Periodic reporting of data to public, without individual ID, but by age, race, gender, rank, assignment and other

characteristics. The data, to be compiled by the City's 52 neighborhoods, are to include arrests; crimes; citations; stops; use of force; positive interactions; reports of unfavorable interactions; injuries to citizens; complaints

- Sampling of in-car camera and audio recordings; database of sampled recordings; study of how people are treated by police
- Examination of hiring, promotion and transfer process
- Periodic reports that answer a number of questions, including:
  - Is safety improving?
  - Is use of force declining, and is it distributed equally?
  - Is the complaint process fair?
  - Do officers feel supported?
  - Is problem solving successful?
  - Are police-community relations improving?
  - Is progress being made on issues of respect, equity and safety?

## **2. Status**

Four bids were received in response to the City's RFP for a contractor to perform the tasks in the Evaluation Protocol. The bids were received from the following vendors:

- Crossroads Center, a non-profit local organization
- Lamberth Consulting, with the University of Cincinnati Center for Law and Justice
- Rand, consultants headquartered in Santa Monica, California
- The University of Cincinnati College of Education, Division of Criminal Justice

An Evaluation Committee, with representatives of each of the Parties, met to discuss the bids, along with the Deputy Monitor and the Parties' consultant on the selection process. Each Party had scored the bids based on an agreed-upon scoring grid. Further discussions among the Evaluation Committee are anticipated in October. The Parties also are likely to consider changes in the scope of the Evaluation Protocol contract that will still deliver the

essential evaluation components, but reduce the cost of the contract.

### **3. Assessment**

While there has been progress in selecting an Evaluator, it will take some time before a selection is made, a contract with the Evaluator is negotiated, and actual work is begun on the Evaluation Protocol. The Parties are not in compliance with the Evaluation provisions at this time.

### **III. Pointing Firearms Complaints [CA ¶48]**

The investigations of complaints of improper pointing of firearms from March 2000 to November 2003 have been forwarded to the Conciliator, Judge Michael Merz. The Parties have also submitted supplementary materials to Judge Merz for his review in making his decision under Paragraph 48. If Judge Merz determines that there has been a pattern of improper pointing of firearms by CPD officers, CPD officers will be required to complete a report when they point their weapon at a person. If Judge Merz finds that there has not been a pattern of improper pointing of firearms, CPD officers will not be required to complete such reports.

### **IV. Fair, Equitable and Courteous Treatment**

The CA requires the Parties to collaborate in ensuring fair, equitable and courteous treatment for all, and the implementation of bias-free policing. Data collection and analysis are pivotal to tracking compliance, and training is essential to inculcate bias-free policing throughout the ranks of CPD. The Monitor, in consultation with the Parties, is required to include detailed information regarding bias-free policing in all public reports. The collection and analysis of data to allow reporting on bias-free policing is to be part of an Evaluation Protocol developed with the advice of expert consultants.

## **A. Data Collection and Analysis [CA ¶¶ 38-41, 51, 53]**

### **1. Requirements**

As part of the Evaluation Protocol, CPD is required to compile the following data to be analyzed, by percentage attributable to each of the City's fifty-two neighborhoods:

- Arrests
- Reported crimes and drug complaints
- Citations of vehicles and pedestrians
- Stops of vehicles and pedestrians without arrest or issuance of citation
- Use of force
- Citizen reports of positive interaction with members of the CPD by assignments, location, and nature of circumstance
- Reports by members of the CPD of unfavorable conduct by citizens in encounters with the police
- Injuries to officers during police interventions
- Injuries to citizens during arrests and while in police custody
- Citizen complaints against members of the CPD

Paragraph 40 requires that the City provide to the Monitor incident-based data so that the nature, circumstances and results of the events can be examined.

Paragraph 51 references Ordinance 88-2001, which identifies required data to be reported and analyzed to measure whether there is any racial disparity present in motor vehicle stops by CPD. The local ordinance requires the following information be gathered:

- the number of vehicle occupants
- characteristics of race, color, ethnicity, gender and age of such persons (based on the officer's perception)
- nature of the stop
- location of the stop
- if an arrest was made and crime charged
- search, consent to search, probable cause for the search; if property was searched, the duration of search
- contraband and type found and
- any additional information.



Paragraph 53 of the Collaborative Agreement requires the Monitor, in consultation with the Parties, to include in all public reports, detailed information of the following:

- racial composition of those persons stopped (whether in a motor vehicle or not), detained, searched, arrested, or involved in a use of force with a member of the CPD; and
- racial composition of the officers stopping these persons.

## **2. Status**

### **a. Traffic and Pedestrian Stop Data**

Professors Eck and Liu of the University of Cincinnati were selected to analyze traffic-stop data for the period May 1, 2001 to December 1, 2001. Much of their time in the previous two quarters was spent checking accuracy of data. Data corrections have now been made to the 2001 data, and most of the analysis completed. It is anticipated that the traffic-stop data study will be complete by September 30, 2003. The Parties have met with the Monitor regarding the release of this data for public review.

With respect to collecting data on traffic stops and pedestrian stops since December 2001, CPD continues to collect the information on Contact Cards and manually enter the data into a database. According to the CPD, supervisors are required to review all Contact Cards to ensure proper completion of all required fields. CPD also states that a recent audit of Contact Cards by the Records Section and the Administration Bureau Commander found that most of the Contact Cards submitted had been filled in completely. The Monitor has not been provided any documentation of this audit, however.

CPD also notes that the Records Section has devoted personnel to the data entry effort, and instructed persons inputting the Contact Cards on how to correct missing or incorrect entries. Examples of these instructions are as follows:

- Mark FI (field interview) or MV (motor vehicle) field if not there and if it can be determined from the information provided on the card.
- If Search is NONE, mark Contraband as NONE.

- If any one of “Citation, Arrest, Warning” is marked “yes,” assume a “no” for the other fields.
- DO NOT send back for no Supervisor or no Citizen's Attitude entry.
- If District is missing, check back of card, or get officer's District by his badge number.
- If no age, check back for DOB and calculate.
- If missing Race and/or Sex, check back of card for same data and enter if available.
- Determine Reason for Stop by Section #, MV or EV.
- If Total # Occupants is missing, count the driver and passenger[s] listed and enter.

If missing data cannot be entered, Records Section personnel have been instructed to return the Contact Card to the District/Section of origin for correction.

With respect to automated collection and entry of traffic stop and pedestrian stop data, CPD reports that its initial inquiries into using Scantron forms for data collection yielded cost estimates that were too high to implement as an interim measure. Instead, the Department continues to work on its COPSMAST project through Hamilton County. Under this project, CPD will be equipping its patrol cars with mobile data computer terminals, and officers would enter data on traffic stops directly into the computers in the field. Since our Second Quarterly Report, Hamilton County has awarded Aether Systems the software and infrastructure portion of the COPSMAST project. The Aether Solution includes Aether Packet Cluster Patrol, PacketWriter, and a Data Radio RF infrastructure. This system, however, likely will not be implemented for at least another year.

Moving beyond the question of how the data is collected, the Parties have not yet selected who would analyze the data, or how it will be analyzed. This will be the responsibility of the Evaluator selected under the Evaluation Protocol. As discussed in Section II, four bids have been received by the Parties in response to the Evaluation Protocol RFP. The Parties have met to discuss the bids, but a selection is not anticipated for at least another 30 days.

A final issue relates to when officers are required to collect data (e.g., fill out a Contact Card) on pedestrian stops. The City's

Ordinance 88-2001 covers only vehicle stops. Under paragraphs 38 and 39 of the CA, however, the statistical compilations required under the Evaluation Protocol include “stops of vehicles and pedestrians without arrest or issuance of a citation.” These data shall be broken down by race, national origin, gender, geographical area, and other characteristics deemed appropriate. The CPD procedure that governs investigatory stops, Procedure 12.554 (A.1), states only that:

Police personnel meeting persons in the field under circumstances which justify questioning, but are insufficient to warrant an arrest, may complete a single copy of the Contact Card.

The City of Cincinnati reports that the City Solicitor’s office is currently considering the question of whether the CA requires Contact Cards for Terry stops that do not result in an arrest.

#### **b. Use of Force Racial Data**

As noted above, the CA requires CPD to collect, and the Monitor to Report, the racial composition of both officers and subjects involved in a use of force incident. The Crime Analysis Unit of the Planning Section has prepared a sample report that links use of force data from the first quarter of 2003 to data in the CPD Personnel Section containing the race of the officer. This Unit will be responsible for developing such reports until CPD’s Record Management System is in place. We will report on this data in our next Quarterly Report.

#### **c. Data on Positive Police-Citizen Interactions**

CPD is required to collect data from citizens on positive interactions with police officers, as well as encourage citizens and city employees to report such favorable police actions.

Our Second Quarterly Report noted that the Citizen Feedback Form is available at police facilities, and information from the feedback forms has been included periodically in CPD’s Staff Notes. However, the City and the FOP had not settled on what further efforts are needed to publicize the process for reporting positive interactions and disseminate these forms. The Parties report that

by the end of September 2003, a new form will be finalized and a public awareness plan will be in place.

#### **d. Data on Unfavorable Citizen Interactions**

The Parties have not yet implemented the required “[r]eporting by members of CPD of unfavorable conduct by citizens in encounters with police.” In our Second Quarterly Report, we reported that the Plaintiffs and the FOP were discussing the language to be used on the form for collecting data on unfavorable citizen contact. During the September 18, 2003, all-Party meeting, the FOP circulated a revised “Cincinnati Police Mutual Accountability Report of Unfavorable Conduct by Citizens.” The revised form will be discussed at the October all-Party meeting.

### **3. Assessment**

Although efforts have been made to increase the accuracy of the data input into the system, the Parties remain out of compliance with the data collection and analysis provisions of the CA. This is in great measure because the outside contractor who will be responsible for compiling and analyzing the data under the Evaluation Protocol has not yet been selected. Moreover, despite adding personnel to the data entry effort, there remains a significant backlog of Contact Cards to be entered into the CPD database. Third, CPD has not put in place procedures ensuring that officers will collect data on pedestrian stops.

The Parties also are not in compliance with the requirements of compiling data on officer reports of unfavorable citizen conduct and citizen reports of favorable police interactions.

## **B. Training and Dissemination of Information [CA ¶52]**

### **1. Requirement**

The Collaborative Agreement requires that all Parties cooperate in the ongoing training and dissemination of information regarding the Professional Traffic Stops/Bias-Free Policing Training Program.

## **2. Status**

In 2001, CPD included a four-hour class on Professional Traffic Stops as part of the Police Academy basic training course. The Professional Traffic Stops training included a segment on bias-free policing. The bias-free policing training was developed in conjunction with Ohio Chiefs of Police. This training block has been repeated in Academy recruit training in 2002 and 2003. CPD also included this training in its 2002 In-service Training for Police Officers and Specialists, and in management training in 2001 for captains and above. Thus, CPD states that every officer has undergone this training at least once.

While in-service training on bias-free policing has not been repeated since July 2002, CPD also notes that aspects of bias-free policing training have been incorporated into other training, such as use of force training and roll call scenario training.

A member of the Monitor Team attended the Professional Traffic Stops/Bias-Free Policing training at the Academy for the recruit class in July, 2003.

## **3. Assessment**

Although the Police Academy recruit training program requires that each recruit attend the Professional Traffic Stops/Bias-Free Policing training, the level of ongoing training to all officers as required by the CA is uncertain. Further, there is no evidence of the other Parties' participation in the ongoing training and dissemination of information. As a result, the Parties are in partial compliance with this requirement.

### **C. Professional Conduct [CA ¶54]**

#### **1. Requirement**

Paragraph 54 of the CA requires that when providing police services, officers conduct themselves in a professional, courteous manner, consistent with professional standards. Except in exigent circumstances, when a citizen is stopped or detained and then released as a part of an investigation, the officer must explain to the citizen in a professional, courteous manner why he or she was

stopped or detained. An officer must always display his/her badge on request and must never retaliate or express disapproval if a citizen seeks to record an officer's badge number. These provisions are to be incorporated into written CPD policies.

## **2. Status**

This provision has now been incorporated into procedures 12.205 and 12.554, and put into effect. CPD's Manual of Rules and Regulations also generally mandates courteous, fair treatment of all.

## **3. Assessment**

Based on the information we have to date, the City is in compliance with the professional conduct provision of the CA.

## **V. CCA**

### **A. Establishment of CCA and CCA Board [CA ¶ 55-64]**

The City is in compliance with these provisions.

### **B. Executive Director and Staff [CA ¶¶ 65-67]**

While the City had selected and hired Nate Ford as Executive Director in January, 2003, Mr. Ford resigned effective June 27, 2003. The City will now hire a national recruiting firm to begin the selection process anew. In the interim, Dan Baker is serving as Acting Executive Director, but only in a part-time capacity. There are four full time investigators working for the CCA. The City is in the process of hiring a fifth investigator.

### **C. CCA Investigations and Findings [CA ¶¶ 68-89]**

A review of CCA investigations and findings will take place in the next quarter.

## CHAPTER FOUR. REVIEW OF SAMPLE INVESTIGATIONS

As in our prior two Quarterly Reports, we include in this Report summaries of use of force investigations and citizen complaint investigations undertaken by the CPD.<sup>12</sup> Our purpose for reviewing these investigations is to obtain an overall picture of compliance with the Agreements' provisions, by aggregating our observations from a number of incidents and evaluating CPD's general policies and practices, as well as patterns and trends in incidents. We also focus on the completeness and accuracy (or not) of the investigation of the incident. Our purpose is not to judge whether particular officers should be disciplined for violations of law or Department policy, or whether an individual citizen's legal rights were violated. We believe that including these summaries in our Quarterly Reports gives the reader additional content and context to our overall conclusions regarding compliance with the MOA and CA provisions.

### **I. Use of Force Investigations**

Our reviews of use of force incidents address the MOA provisions relating to when force may be used, and how it is to be reported and investigated. In addition, we take account of the following options, as outlined in the MOA, to the extent that they were applicable to a particular scenario.

- Disengagement
- Area Containment
- Surveillance
- Waiting out the subject
- Summoning reinforcements where appropriate
- Calling in specialized units to assist
- Warning given and opportunity for submission prior to application of force

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<sup>12</sup> The Monitor's authority to review and address individual cases stems from several provisions in the MOA and CA, including paragraph 102 of the MOA which authorizes the Monitor to return incomplete investigations to CPD with directions for further investigation. Additional support for this authority is contained in the Agreed Order Appointing Monitor entered by the District Court for the Southern District of Ohio. The Monitor did not request that any of the investigations be re-opened by CPD, as all of the investigations reviewed this quarter were closed and the dispositions of the investigations already communicated to the involved officers.

## **A. Firearms Discharges**

1. Department Tracking Number: IIS 2003-0506, 2/9/03

Summary: Officer was responding to a call regarding a burglar alarm at a clothing store shortly after 4:00 am. Upon his arrival, the officer observed a subject coming from within the store and exiting out a broken plate-glass window. The suspect ran from the location and the officer pursued on foot, broadcasting his activities via police radio to dispatch and responding units. Some short distance from the scene, the officer caught up with the subject as he attempted to climb over a gate in a six-foot high fence. As the officer grabbed the suspect, the gate to the fence swung open and the two fell to the ground. The officer felt the subject attempt to pull at the officer's service weapon. The officer forced the subject's hands away from the weapon and the subject then pulled at the officer's gun belt, drawing the two closer together and knocking the officer off balance. During the struggle, the subject gained control of the officer's baton and struck the officer over the head, causing him to go down to the ground. The officer blocked a second strike using his right forearm. The officer attempted to pull the subject's legs out from under him, but was met with a third strike to the head by the subject. This caused the officer to spin away from the subject. As the officer turned back around, he drew his gun and fired seven rounds. The subject then turned, ran a short distance, stopped, walked, and then fell to the ground. The subject died from his injuries. The officer received cuts and contusions to his head and scalp, and contusions to his right forearm.

CPD Review: Investigation and review of this incident included review by the Homicide Unit of the Criminal Investigation Section (CIS), the Internal Investigation Section (IIS), a Firearms Discharge Board, the prosecutor's office, and the Citizen Complaint Authority. Each of these entities found the officer's actions to be justified and consistent with law and departmental policy. CIS, IIS, the Firearms Discharge Board and the Citizen Complaint Authority prepared in-depth reports on the matter. As required by the MOA, the Firearms



Discharge Board's report covered whether the officer used proper tactics, and whether lesser force alternatives were reasonably available. Both the Firearms Discharge Board and the CCA specifically address the reasonableness of the officer's foot pursuit, and determine that the foot pursuit was consistent with policy.

Monitor's Assessment: Based on a review of all reporting, the use of deadly force and CPD's investigation and review of the firearms discharge appear consistent with the Agreements. Nonetheless, the investigation and the FDB report raise the following issues.

- The Firearms Discharge Board report states that the bullet trajectories as described in the Coroner's report are consistent with the officer's description that he was kneeling and the subject standing when the shooting occurred. In fact, the Coroner's report indicates a downward trajectory with regard to at least four of the rounds. There may be several explanations why this was so, including the coroner's statements that movement by the subject may affect the angle of entry of the bullets. However, the bullet trajectories are better characterized as inconclusive, rather than the FDB's statement that they support the officer's version of events.
- The investigation accounts for seven shell casings and five rounds. It should have been noted that the remaining two rounds of seven were not recovered from the crime scene.
- Homicide investigators took statements from the officer and 29 witnesses. Twelve of those statements were transcribed and included in the CIS investigative notebook provided to the Monitor. CPD reports that the remaining statements were transcribed, but not included in the initial investigative notebook provided to Command staff, and of which we received a copy. Presumably, the FDB had access to the other interviews.

Notwithstanding these issues, the Department did an excellent job in processing the crime scene and recovering evidence, preparing photographs and diagrams, in promptly interviewing the involved officer, canvassing the scene for witnesses, and interviewing witnesses and the officer.

2. Department Tracking Number: 2003-0108, 2/18/03

Summary: Officers were flagged down by a citizen regarding a breaking and entering of a residence. A resident who exited the house from the rear advised officers that the intruder was still inside. The officers radioed for assistance and positioned themselves around the house awaiting back-up. One of the officers heard a scream coming from the front of the house and went to investigate. He observed two subjects run from the house and began a pursuit, advising PCS of the pursuit. During the course of the pursuit and in anticipation of a physical encounter, the officer unholstered his weapon. The officer turned a corner, lost his footing, and fell to the ground. The officer's firearm discharged. The suspects were not apprehended and no one was hit by the discharged round.

CPD Review: The firearms discharge was investigated by the CPD's Homicide Unit and then reviewed by the FDB. The Monitor's review was limited to the FDB report, and did not include the underlying reports or investigation. The Board examined whether the discharge was consistent with departmental policy, procedures, and training. The Board further examined whether the involved officer employed proper tactics. The Board concluded that the officer's decision to engage in a foot pursuit of the subjects was reasonable and within departmental policy. In addition, the Board found the officer's decision to unholster his weapon reasonable due to his perceived threat of danger. However, the Board found that the officer violated departmental policy and training by placing his finger on the trigger without first acquiring a target. The Board also found that the involved officer violated departmental policy by being in possession of unauthorized rounds of ammunition and for not immediately notifying command of the firearms discharge. The Board not only recommended discipline for the violations, but also recommended remedial training for the officer, a

“comprehensive overview” with the officer during an Administrative Insight with his District Commander, and that the facts of the incident be incorporated into a six minute training scenario.

Monitor’s Assessment: The FDB reporting and findings are consistent with the MOA. The discharge and the possession of unauthorized ammunition are outside departmental policy. Further, the presence of unauthorized ammunition reinforces the need for supervisors to conduct periodic inspections of issued equipment.

3. Department Tracking Number: 2003-0671, 4/2/03

Summary: Officer observed two subjects engaged in what he believed to be drug activity. The officer approached the subjects and told them to put their hands in the air and get against the wall. They fled on foot. The officer pursued one of the subjects, who fell on two separate occasions during the pursuit. The officer reached this particular subject, grabbed his shirt and told him to stop running and get on the ground. The subject did not comply with commands to surrender, and raised his left arm and turned toward his left. Fearing that the subject may be armed, the officer unholstered his weapon. The officer continued to struggle with the subject and at some point, determined that the subject was not armed. The officer attempted to holster his weapon; however, he neglected to take his finger off the trigger. The weapon discharged. Neither the officer nor the subject was injured.

CPD’s Review: The firearms discharge was investigated by CPD’s Homicide Unit and then reviewed by the FDB. The Monitor’s review was limited to the FDB report, and did not include the underlying reports or investigation. The FDB focused on the officer’s decision to engage in a foot pursuit and the discharge of the weapon. The Board determined that the officer’s decision to initiate the foot pursuit was not prudent, as the officer did not notify Police Communications of his actions, thus no back-up units were in the area or responding to assist. Further, the officer was not in compliance with Department procedures because he had his finger on the trigger without acquiring a target and engaging a

threat. The Board also reviewed the officer's action in removing his firearm from the holster, and determined that the action was reasonable based on the officer's belief that there was a threat of serious physical harm. The Board recommended a written reprimand as to the firearms issue and counseling with regard to the Department's foot pursuit policy. Last, the Board recommended eight hours of remedial training, including tactical decision making, at the Training Academy and a comprehensive overview during an Administrative Insight with the officer's District command.

Monitor's Assessment: The Board's analysis of this matter was consistent with the Agreements. The Board reviewed both the initial pursuit and the discharge itself, and identified and resolved the relevant issues. It should be noted that in both accidental discharge incidents, the involved officers had their fingers inside the trigger guard and on the trigger without an identifiable target or imminent threat. While these matters concluded without injury to the officers or the subjects, it remains imperative that this issue be reinforced at every level of the Department in an effort to minimize recurrence.

## **B. Use of Beanbag, Pepper-ball, and Taser**

1. Department Tracking Number: 2003-0285, 2/27/03

Summary: Officers were dispatched for a violation of a Temporary Restraining Order. The subject was located hiding on a rooftop when officers arrived. After repeated warnings (12), the subject failed to come down from the rooftop, even after the Fire Department brought a ladder to aid in the subject's descent. A sergeant on the scene fired six pepper-ball rounds in an effort to saturate the area and compel compliance, with no effect. Four additional rounds were deployed, two of which struck the subject. The subject jumped from the roof and sprained his right foot. He was taken into custody without further incident.

CPD Review: District 3 Command reviewed the relevant reports and raised several issues, including the location of Fire Department personnel at the time of deployment, the

impact of the pepper-ball rounds, and an analysis of tactical options in lieu of pepper-ball deployment. The focus of the review was a consideration of best practices that would have involved fewer risks to the subject and personnel on the scene. Notwithstanding, District 3 Command found the use of force consistent with departmental policy and state law.

Monitor's Assessment: Based on the reports reviewed, the use of force appears consistent with the Agreements. Issues raised by District 3 Command evidenced a thorough review of the incident and a thoughtful analysis of other available options for future consideration.

2. Department Tracking Number: 2003-0304, 4/20/03

Summary: Officers responded to a call for Domestic Violence and located a subject sitting on a windowsill armed with a knife that he used to inflict wounds to his own thighs. The subject was ordered at least ten times to drop the weapon and surrender, to no avail. An officer approached subject from the rear and deployed two separate taser rounds. Neither of the rounds made sufficient contact for the taser to take effect. The subject, however, lost consciousness shortly after, presumably from the blood loss from his stab wounds.

CPD Review: CPD review focused on why photographs of the subject were not taken and the whether a SWAT call-up would have been a more appropriate response to the situation. Both issues were addressed by District 1 Command, which concluded that the use of the taser was consistent with departmental policy and state law.

Monitor's Assessment: As indicated in the Inspections Section review of this incident, exigent circumstances called for swift, proactive, yet reasonable, steps for intervention to prevent the subject from killing himself. Based on the review of the documentation, the use of force appears consistent with the Agreements.

3. Department Tracking Number: 2003-0305, 4/21/03

Summary: Officers responded for an adult male subject “tearing up the house.” Upon their arrival, the subject was observed in a highly agitated state. Several warnings were given for the subject to calm down, to no avail. The subject moved towards the kitchen area of the house, but his path was blocked by an officer fearing that the subject might be going to the kitchen for a knife or other weapon. The subject continued advancing towards the officer with his fist raised. The officer deployed one taser round striking the subject in the left hand and upper abdomen. The subject was taken into custody without further incident.

CPD Review: Command Analysis was conducted by review of the relevant reporting. A “doctor’s diagnosis” as required by policy was missing from the reporting. This was handled as a training issue for District personnel. The use of force was determined to be within policy and state law.

Monitor’s Assessment: Based on review, the use of force appears consistent with the Agreements.

4. Department Tracking Number: 2003-0409, 0411, 0412,  
5/4/03

Summary: On the evening of May 3, 2003 (Cinco de Mayo), CPD personnel were deployed to disperse a large disorderly crowd who were overturning cars and setting fires. The night commander authorized use of beanbag shotguns as crowd control weapons if needed. A responding officer, a member of one of two crowd control teams deployed to the area, observed three separate individuals come out from the crowd at different points and throw bottles at officers. The officer deployed beanbag rounds at each from a range of 100-150 feet. All rounds missed the targets and the individuals retreated back into the crowd. The crowd was eventually brought under control by the teams.

CPD Review: Command analysis was based upon review of the Use of Beanbag report and after-action reports filed by the District 5 lieutenant and investigating sergeant. The after-

action reports properly noted that the distance from which the rounds were fired was greater than the manufacturer's recommended deployment distance, thus effectiveness was diminished. Further, deployment at such a distance increased the risk of someone being struck by a stray round. Notwithstanding, District 5 Command found the use of force consistent with departmental policy and state law.

Monitor's Assessment: Command properly noted training issues, which were addressed by the officer's supervisors. Not only is the effectiveness of a beanbag round diminished by distance, with the risk to innocent bystanders increasing under such conditions, but consideration also should have been given to the backdrop, which was likely a large crowd of people.

### **C. Use of Canine**

1. Department Tracking Number: 2002-0839, 12/15/02

Summary: Police officers were dispatched to a residence for a Domestic Violence offense involving a male subject wanted on several outstanding felony warrants. Upon their arrival, a male subject was seen running into the woods. A perimeter was established and a supervisor who was not on the scene authorized deployment of a canine. A canine unit responded and the handler deployed his canine partner on a thirty-foot lead. A male subject, later determined not to be the wanted subject, was located in the woods by the canine and the subject was bitten. He surrendered to the handler and the canine was called off. The subject received minor wounds to his leg. When interviewed, the subject indicated that he ran from the police because he was wanted on misdemeanor warrants. He also stated that he stood up before the dog bit him and said "You got me. I ain't got nothing." The subject who ran and was subsequently bitten did not match the physical description of the subject from the original call for service.

CPD Review: The initial review of this incident was conducted by the supervisor who had authorized the deployment. He concluded that the actions taken were consistent with

departmental policy and state law. The District 3 lieutenant who then reviewed the investigation identified two relevant issues:

- Why was the subject bitten when he was not wanted for a felony or serious misdemeanor?
- Conflicting versions of what the subject said when he encountered the canine and the officer, and whether he gave up before he was bitten by the dog

The lieutenant determined the canine deployment was in policy because the officers believed the suspect running into the woods was the same person described in the call for service, a wanted felon. Second, the lieutenant determined that regardless of what the subject said when he saw the canine, his standing up surprised the dog and gave the handler no time to call the dog back prior to the engagement. A subsequent review by the District 3 Captain indicated concurrence with the lieutenant's assessment.

A more detailed review of the incident was conducted by the Special Services Section Commander. This review addressed the tactics and deployment of the canine, the documentation prepared by the investigating sergeant, and included a series of recommendations. The commander determined the deployment to be within departmental policy. However, he noted that the responding officers should have been able to discern the significant differences in physical appearance between the subject seen running into the woods and the wanted subject related to the call for service. These differences should have prompted more investigation before a decision to deploy the canine was made.

The commander also noted a number of deficiencies in the investigating sergeant's interview of the bitten subject. These deficiencies included:

- Why the interview did not include the fact that the subject knew that he was wanted and purposely ran from the police to avoid capture. While this information is in the



written report of the incident, it is not covered in the interview.

- Clothing was discovered in the woods prior to the subject being located by the dog, but it was never clarified as to whether these clothes were the bitten subject's or the suspect associated with the call for service.
- Although the subject indicates that he surrendered prior to being bitten by the dog, the Section Commander believed his injuries were inconsistent with that point. This issue should have been pursued further in the interview.
- There was no indication in the interview whether the subject heard the handler's warnings and command to surrender.
- The investigating sergeant repeatedly interrupted the subject during the course of the interview. These interruptions may have prevented the subject from making important statements such as clarifying his position when bitten by the canine.

The commander also noted minor errors in documentation of the investigation (e.g., the voluntary release of medical records was not included in the force packet). Last, the commander recommended that the investigating sergeant be counseled on the issues raised. He then concluded that the deployment was in accordance with departmental policy, contingent upon the concerns that he noted in his report.

The investigation was returned to District 3 by the Patrol Bureau Commander. The District 3 lieutenant then concluded that the sergeant who authorized deployment should have responded to the scene, and asked more questions about the incident and the subject seen running into the woods, before making the decision to deploy the canine. The responding officer who provided the information to the sergeant also made faulty assumptions about his observations, rather than taking into account the description of the wanted suspect and other information available to him at the time of the incident. Had these things been done, the

canine would not have been utilized and the bite would not have occurred.

CPD determined that the sergeant violated the Department's canine procedures by not responding to the scene and investigating prior to deploying the canine. A disciplinary hearing was recommended by the District 3 lieutenant and was approved by the Chief of Police.

**Monitor's Assessment:** Although the initial investigation of this bite was problematic, subsequent review by the Chain of Command resulted in a more serious evaluation of the incident. While the actions of the handler were made in good faith when he deployed the canine, the information provided by the sergeant authorizing that deployment was flawed, thus making his decision to authorize deployment inconsistent with departmental policy. With respect to the bite, the track was conducted at night in the woods, making it difficult for the handler to see what was ahead of the canine, especially since the canine was on a long lead. It appears that the sudden movement of the subject resulted in an aggressive response by the canine. If these circumstances precluded use of force at a lower point in the continuum, the bite would be consistent with MOA provisions and Department policies. Once the handler recognized that the dog had engaged, he called the canine off and the canine immediately complied. What is not clear, however, is the extent to which canine warnings were given, either before deploying or during the search, which might have provided the suspect with a better opportunity to surrender. This incident is an example of the importance of ensuring compliance with the deployment criteria, and the need to thoroughly investigate canine bites.

#### **D. Physical Force**

1. Department Tracking Number: 2003-0037, 1/4/03

**Summary:** Uniformed officer working an off duty detail at a Krogers store initiated an arrest of a shoplifting subject. The subject actively resisted the arresting officer and the officer took the subject to the ground. The subject got back to his feet and continued active resistance. The officer attempted

control of the subject using a “bear hug” and managed to deliver a burst of chemical irritant to the subject, having minimal effect. An additional officer working a nearby detail arrived and assisted the arresting officer in securing the subject without further incident. The responding back-up was not present when any use of force occurred and is therefore not listed as participating in the use of force incident.

CPD Review: District 3 Command properly suggests that the use of chemical irritant should have come much earlier in the struggle, as the interviews reveal that the initial contact lasted approximately 60 seconds prior to the officer’s leg sweep, which resulted in both the officer and subject falling to the ground. Furthermore, Command properly notes the option of disengagement and use of chemical irritant to avoid having to go to the ground.

Monitor’s Assessment: Based on the reporting, the use of force appears consistent with the Agreements. The most relevant issues were raised and resolved by command in their review. However, the CPD review did not address the question of whether a warning was given prior to the use of chemical spray. While it appears from a review of the reports that the actions of the subject and the risk he posed to the officer may have made a warning impractical, regardless of when the irritant was administered, resolving this issue ensures that CPD members are reminded that a verbal warning is required where practical. Also, it is unclear at what point, if any, dispatch was notified of the officer’s circumstances so that sufficient back-up could be dispatched if needed.

2. Departmental Tracking Number: 2003-0060, 1/17/03

Summary: Officers received dispatch information regarding wanted subject. Consent to search was granted by the resident of the apartment and the subject was located by the officers in a bedroom, where he was lying on a bed. Officers ordered the subject to show his hands, which were under his body. Subject did not comply with directives and the officers closed on the subject to gain control. After several elbow strikes to the back by one of the officers, the subject complied

and was arrested without further incident. The subject complained that his arm was pulled back behind him in an attempt to inflict unnecessary pain. The complaint was deemed “not sustained” because there was no independent evidence for the allegations.

CPD Review: District Command personnel reviewing the Use of Force Report properly identified several issues for review, including identification of a third-party witness on the scene but not listed on the initial report, tactical issues with regard to the failure to use chemical irritant as opposed to elbow strikes, and confirmation that consent was freely and voluntarily given prior to police entering the apartment of a third party and conducting a search for the subject. These issues were properly resolved and clarified by Command review of the incident.

Monitor’s Assessment: Based on review of the incident as outlined in the reports, the use of force is consistent with the Agreements. Issues regarding use of chemical spray, closing with potentially armed subjects, and pre-planning arrest operations where feasible, were properly noted and reviewed by Command. The issues were brought to the attention of the involved officers by supervisors.

3. Departmental Tracking Number: 2003-0076, 2/2/03

Summary: Uniformed officers observed subject driving a stolen vehicle. Subject exited the vehicle when the officers initiated the stop. Subject resisted apprehension by officers and was forced to the ground. Subject continued to resist after being given a directive by the officers. One of the officers delivered an open-hand palm strike that resulted in compliance. The subject was secured without further incident.

CPD Review: Command properly raised the issue of why chemical irritant was not used in this incident. The rapidly evolving circumstances precluded use of the irritant, as both officers needed their hands to safely maintain control of the subject.

Monitor's Assessment: The District Commander appropriately recognized that use of a chemical irritant may have proven effective and thus negated the need to use of a distraction strike. This information was provided to the officers by supervision. Nonetheless, based on review of the reports, the use of force is consistent with the Agreements. As with other reviews, it is unclear at what point, if any, the officers communicated their circumstances with dispatch to summon additional personnel to assist.

4. Departmental Tracking Number: 2003-0128, 2/13/03

Summary: A Downtown Ambassador reported that a panhandler, who had been previously approached for menacing, had threatened to shoot the Ambassador. Officers were dispatched and approached the subject and attempted to make an arrest. The subject pulled away and chemical irritant was delivered, without effect. An arm bar was used to take the subject to the ground, where he was secured without further incident.

CPD Review: District 1 Command reviewed the officers' actions and concluded that the officers had formulated an arrest plan prior to approaching the subject in anticipation of his resistance, and had used reasonable force in making the arrest.

Monitor's Assessment: Based on the review of the reporting, the use of force was consistent with the Agreements.

5. Department Tracking Number: 2003-0164, 2/13/03

Summary: Uniformed officer working an off-duty detail at Walgreens attempted to take a shoplifting subject into custody when the subject resisted by pulling away and attempting to flee. As the arresting officer tried to regain control, both fell to the ground. The subject kicked the officer in the face, chest, leg, and arm and also gained control of the officer's PR-24. A citizen witness assisted the officer in controlling the subject until back-up units arrived. The subject was taken into custody without further incident. Civilian witness statements taken by the investigating

sergeant immediately after the incident support the officer's account. The subject invoked his right to counsel and did not provide a statement immediately following the incident. However, the subject did advise the investigating sergeant that his back was hurting and his handcuffs were too tight.

CPD Review: The investigating sergeant properly identified relevant points in his review of the incident, specifically as to why chemical irritant was not used to gain control of the subject. The investigating sergeant and the District commander concluded it was not practical to do so (the officer did not have access to the subject's face, a burst of spray could have incapacitated officer and civilian witness because of proximity). The District commander also noted concern over the subject's gaining control of the officer's PR-24, and recommended that the Training Academy and Inspections Section follow-up on weapon retention training. The District command also requested clarification regarding the subject's statement in his taped interview that he may have incurred an injury to his back. The Use of Force form failed to indicate such. A follow-up interview with the subject suggests that while he may have commented on his sore back, it appears he had a pre-existing back injury unrelated to this incident.

Monitor's Assessment: Based on review, the use of force was consistent with the Agreements.

6. Departmental Tracking Number: 2003-0193, 3/12/03

Summary: Uniformed officer was working secondary employment at Krogers when the subject was seen leaving the store with unpaid items. A foot pursuit ensued and the subject was located approximately one quarter mile away hiding behind a sign. The officer ordered the subject to the ground at gunpoint several times. The subject was not responsive to the officer's commands. The officer holstered his weapon, closed on the subject, and used an arm bar take-down. The subject was secured without further incident.

CPD Review: District 5 Command properly notes that the officer might have been better served by using chemical spray

instead of an arm bar take-down, as the take-down increased the risk of injury to both the officer and subject.

Monitor's Assessment: Based on review of the reports, the use of force appears consistent with the Agreements. However, there was no discussion in the CPD review regarding the decision to pursue on foot, and the considerations listed in CPD's foot pursuit policy and the MOA. Further, it is unclear at what point, if any, the officer radioed his actions to dispatch or requested additional assistance. Last, the question of whether or not the officer was running with his weapon in hand (as opposed to unholstering the weapon when he encountered the suspect behind the sign) was not addressed in CPD's review.

#### **E. Use of Chemical Irritant**

In reviewing chemical spray incidents, our review examined the following issues, among others:

- If a crowd situation, was supervisor authorization given, if feasible?
- Was the chemical spray necessary to protect officer, the subject, or others from harm?
- Was the spray necessary to arrest an actively resistant subject or prevent the escape of the subject?
- Did the officer provide a verbal warning prior to use, if such a warning was practicable?
- Did the officer target the subject's torso and face?
- Duration of use and the distance of deployment
- Decontamination of subject and area
- Use of chemical irritant on a restrained subject (use of restraining equipment, whether subject presented a risk of escape, or posed a threat)

1. Department Tracking Number: 2003-0244, 3/31/03

Summary: Uniformed officers received a call for mentally ill subject and encountered him in the lobby of an apartment building. Subject appeared to be hallucinating, made threatening/slashing motions to his own throat, and threatened to kill the officers. Officers gave warnings to no

avail. Subject resisted restraint (handcuffs), and chemical irritant was deployed. The subject was handcuffed without further incident.

CPD Review: The District Captain reviewed the Use of Chemical Irritant Report (Form 18CI) and arrest reports. Based on that review, the District 4 Commander found the use of force to be consistent with training and policy.

Monitor's Assessment: Based on review of the reports, use of force appears consistent with the Agreement.

2. Department Tracking Number: 2003-0447, 6/10/03

Summary: Two subjects were engaged in a physical confrontation in police presence. As an officer on the scene attempted to deploy chemical irritant to defuse the situation, the spray affected a third individual who was trying to separate the persons fighting. The subject refused to identify herself to the officer and was released without incident.

CPD Review: District 4 Command reviewed the Use of Chemical Irritant Report (Form 18CI) and found the use of force to be consistent with training and policy.

Monitor's Assessment: Use of spray appears consistent with Agreements. However, the Use of Force Report fails to indicate whether or not a warning of impending force was given prior to the use of the irritant, and from what distance it was applied.

3. Department Tracking Number: 2003-0408, 5/30/03

Summary: Uniformed officer working secondary employment observed a fight between two persons. The officer initiated contact and delivered warnings to stop, to no avail. Chemical irritant was deployed and subjects were secured without further incident.

CPD Review: District 1 Command reviewed the Use of Chemical Irritant Report and arrest report. Based on that



review, District 1 Command found the use of force consistent with training and policy.

Monitor's Assessment: Use of force appears consistent with the Agreements. Appropriate warning was provided prior to deployment and decontamination was provided shortly after.

4. Department Tracking Number: 2003-0382, 5/20/03

Summary: Uniformed officers responded to assist in securing what the report describes as a "homicidal" subject. Subject actively resisted as officers attempted to take him into protective custody. Chemical irritant was deployed and the subject was secured without further incident.

CPD Review: District 3 Command reviewed the Use of Chemical Irritant Report and arrest report. Based on that review, District 3 Command found the use of force consistent with training and policy.

Monitor's Assessment: Based on review of the reporting, use of force appears consistent with the Agreements. However, the report does not state whether a warning of impending force was given prior to deployment of the irritant.

5. Department Tracking Number: 2003-0353, 5/10/03

Summary: Uniformed officer working secondary employment at Krogers observed two subjects engaged in a physical altercation. The officer gave multiple warnings to cease, to no avail. Chemical irritant was deployed and one combatant was arrested without further incident.

CPD Review: District 4 Command reviewed the Use of Chemical Irritant Report and the arrest report. Based on that review, District 4 Command concluded the force to be consistent with departmental policy and training.

Monitor's Assessment: Based on review of the reporting, use appears consistent with the Agreements.

6. Department Tracking Number: 2003-327, 5/6/03

Summary: Subject was drunk and disorderly in public when the arresting officer initiated contact. The subject refused to place his hands behind his back and submit to arrest and subsequently took a "fighting stance" against the arresting officer. Chemical irritant was deployed and the subject was secured without further incident.

CPD Review: District 1 Command reviewed the Use of Chemical Irritant Report and the arrest reporting. Based on that review, District One Command found the use of force to be consistent with policy and training.

Monitor's Assessment: Based on review of the reporting, the use of force appears consistent with the Agreements. Again, it remains unclear whether a warning of impending force was given prior to the deployment of irritant. Further, the use of the checklist to describe the subject's attack posture is insufficient to adequately describe suspect demeanor that may be relevant to an analysis of the incident.

7. Department Tracking Number: 2003-0293, 4/22/03

Summary: Uniformed officers encountered a fight between two individuals. Orders were given to stop and the individuals initially complied. One of the combatants was secured without further incident, while the other continued resistance. Chemical irritant was deployed as the subject continued to resist. He was secured without further incident.

CPD Review: District 1 Command reviewed the Use of Chemical Irritant Report and arrest reporting. Based on that review, District 1 Command found the use of force to be consistent with policy and training.

Monitor's Assessment: Based on review of the reporting, the use of force appears consistent with the Agreements. However, it is unclear whether a warning of impending force was given prior to the deployment of the irritant.

8. Department Tracking Number: 2003-0272, 4/19/03

Summary: Uniformed officers observed a subject wanted on open warrants. The subject fled on foot but officers were able to catch up with him after a brief pursuit. The subject assumed a “shoulder shift position” (a defensive posture) towards an officer and refused to comply with orders to submit to arrest. Chemical irritant was deployed and the subject was secured without incident.

CPD Review: Command analysis was limited to review of the Use of Chemical Irritant Report and arrest report. Based on that review, District 2 Command found the use of force to be within training and policy.

Monitor’s Assessment:Based on review of the reporting, the use of force appears consistent with the Agreements. However, we are unable to determine whether a warning of impending force was given prior to deployment of irritant. Also, discussion of the Department’s foot pursuit policy and the relevant considerations were absent from Command’s review of the incident.

9. Department Tracking Number: 2003-0252, 4/15/03

Summary of Incident: Uniformed officers were attempting to place subject under arrest for disorderly conduct when she began to actively resist arrest and refuse to comply with warnings provided by the arresting officers. Chemical irritant was deployed and the subject was secured without incident.

CPD Review: Command review was limited to review of the Use of Chemical Irritant Report and the arrest reporting. Based on that review, District 4 Command found the use of force consistent with training and policy.

Monitor’s Assessment:Based on review of the reporting, the use of force appears consistent with the Agreements.

## **F. Use of Chemical Irritant While Restrained**

With regard to the following cases involving the use of chemical irritant on a subject restrained and in police custody are the following relevant issues.

- Was the subject properly restrained in the vehicle?
- Was the subject an escape risk or pose a threat to the officer or others?
- Was the requisite warning of an impending use of force given?
- Did the investigation include taped statements of officers, witnesses and the subject?
- Was there a critical review of the investigation by the Inspections Section?

### **1. Department Tracking Number: 2003-0159**

Summary: Subject was arrested for criminal damaging and was placed in the rear of a police vehicle. The Plexi-glass partition was open and the subject spat at the officer who was seated in the passenger compartment of the patrol vehicle. The officer was hit in the face. The officer, without warning, sprayed the subject with chemical irritant.

CPD Review: The District 3 sergeant investigating the incident raised several issues:

- The sergeant's initial interview was recorded in "double" speed. Particular attention to the recording device will be paid in future investigations.
- No prior warning was given to the subject. The sergeant concluded the officer acted instinctively, based on the suddenness of the assault.
- Although there was some inconsistency as to whether chemical spray was used one or two times, a subsequent interview of the subject revealed that the subject had been sprayed once.

- The assault against the officer could have been prevented had the officer ensured that the Plexi-glass partition was closed.

CPD concluded that the use of spray was within policy.

Monitor's Assessment: As noted by the investigating sergeant, the officer did not give the subject a warning prior to using chemical spray, as is required by both the Agreements and CPD policy. While the subject may have spit at the officer with no warning, where an officer can control a subject and prevent further resistance without the use of force, chemical spray should not be used. Here, closing the partition and providing a warning could reasonably have been expected to prevent further resistance.

2. Department Tracking Number: 2003-0181, 2/19/03

Summary: Subject was being transported to detention after an arrest for Disorderly Intoxication. Subject became combative and began kicking and hitting his head on the Plexiglas partition. The arresting officer pulled the car over and called for assistance in bringing the subject under control. Assistance arrived, an order to cease was given, the subject spat on the officers and the officers sprayed the subject with chemical irritant. The subject told the investigating sergeant that he was kicked by the officers and further complained that the use of chemical irritant was unreasonable force. A complaint form was prepared by the investigating sergeant.

CPD Investigation: A number of relevant issues were addressed by Command, including clarification as to the subject's injuries, photographing of subject, an explanation for the inoperability of the MVR equipment, and review and resolution of the citizen complaint issues. It was determined that the suspect had not been injured by police action as the video portion of the MVR did not reveal any contact with subject other than the deployment of the chemical irritant. Further, it was determined that the officer's MVR equipment was checked and found working prior to beginning his tour.

After a thorough review, District 3 Command deemed the action consistent with departmental policy and state law.

Monitor's Assessment: The review by District 3 Command raised and resolved the relevant issues regarding this matter. The officers' actions appear consistent with the Agreements. Notwithstanding, further clarification should have been provided to dispel any concern that the officers' use of chemical irritant was not a reaction to the spitting, but rather deployed to prevent harm to the subject.

3. Department Tracking Number: 2003-0221, 4/3/03

Summary: Subject was being transported to Justice Center following an arrest for disorderly conduct. During the transport, the subject began spitting at the officers through a small gap in the partition that separated the officers from the subject. After repeated demands to stop, the officers sprayed the subject with chemical irritant.

CPD Review: District 1 Command concluded that the force was consistent with departmental policy and state law.

Monitor's Assessment: Notwithstanding Command approval of this incident, the following issues remain unresolved. Was the subject restrained in the car and where was he seated in relation to the officers? Was the subject warned that chemical spray would be used, or did the officers merely demand that the subject stop spitting? Resolving these issues would have been helpful for a thorough review of this incident. In addition, it is not clear how use of chemical irritant in this case was consistent with CPD's requirement that chemical spray be used on a restrained individual only when the restrained individual or another person is likely to suffer injury or to escape, absent the use of chemical irritant. If chemical spray was being used to protect the officers from harm, this must be clearly articulated in the reports.

4. Department Tracking Number: 2003-0236, 4/4/03

Summary: Subject was arrested by officers for a narcotics violation. After the subject was handcuffed, the arresting

officer initiated a search incident to arrest, while the secondary officer began a search of the subject's vehicle. The subject broke free from the officer, ran a short distance, and tripped over a roadway divider. He continued to resist the officers and was sprayed with chemical irritant. The subject was taken into custody without further incident.

CPD Investigation: District Command reviewed the required reporting, taped interviews, and MVR records. The investigating sergeant noted that officer safety was compromised by a lack of control over the subject and the fact that the secondary officer did not remain with the arresting officer while the search incident to arrest was being completed. The officers were counseled on these issues, and the counseling is noted in the officers' ESL (employee supplemental log). Command found the officers actions to be consistent with departmental policy and state law.

Monitor's Assessment: The use of a warning and decontamination after the chemical spray is noted on the Use of Chemical Irritant Report, but not in the narrative section. Command properly identified the arrestee control issue, as it clearly contributed to the need to use force against a resistant subject who had broken away from the arresting officer.

5. Department Tracking Number: 2003-0435, 6/6/03

Summary: Subject was arrested for Domestic Violence after officers were called to the location for a disturbance. Upon their arrival, a brief vehicle pursuit occurred and the suspect was stopped. The arresting officer had his weapon out of the holster and pointed to the ground. The suspect was handcuffed without further resistance. During transport, the subject began to strike his head on the partition. The subject was ordered to stop several times to no avail. A warning of impending force was provided. Chemical spray was used when the subject continued to bang his head, after which the subject complied.

CPD Investigation: Command analysis was based upon review of the required reporting and a review of witness interviews. Aside from the Use of Chemical Irritant Report, arrest report,

and the taped statements, there is no separate memorandum from Command identifying any issues or concerns for resolution. District 3 Command found the use of force to be consistent with departmental policy and state law.

Monitor's Assessment: There is no indication on the Use of Force Report as to how the subject was restrained in the vehicle during transport. While the use of force appears reasonable as an effort to prevent the subject from injuring himself, an inquiry by the District Commander would have been helpful as to whether or not proper restraints were used. In addition, two other issues were raised during the taped interviews. The first dealt with an inappropriate comment that the involved officer allegedly made to the suspect (he was alleged to have called suspect a retard). The investigating supervisor discounted the comment through his interview of a witness who was in a position to have heard the comment if it had been made. Second, the subject alleges that the officer drew his weapon and pointed it at him. The investigating sergeant raised this issue with the involved member, who confirms having his weapon out of the holster, but pointed to the ground. The sergeant did not complete a complaint form regarding these allegations, nor were they addressed in the Command analysis. Absent a review of the taped statements, Command may not have had the full benefit of reviewing this incident. Moreover, the MOA requires that complaints of improper pointing of firearms be handled by IIS.

## **II. Citizen Complaint Investigations**

### **A. IIS Investigations**

1. Department Tracking Number: 02193, 08/05/02

Summary: Citizen complained about excessive force that two officers used when placing him under arrest. The incident occurred at a facility for persons with mental illnesses and there were several witnesses. At the time of the arrest, the complainant was at the mental health facility because he had not been taking his medications. According to the complainant, during the course of his arrest, the officers maced him and used their PR24 an excessive amount of times. Complainant was transported to UC



Hospital. According to the officers, they struck the complainant six to ten times with the PR24, and the macing was necessary to gain control.

CPD Review: The witnesses were interviewed either by the District 4 sergeant or IIS. Most of the individuals who observed the incident indicated that the police operated within the confines of good judgment. One of the witnesses, however, did state that he felt the officers used more force than necessary. The investigating sergeant recommended that the complaint be closed as "not sustained." The complainant was declared incompetent to stand trial for the charges of resisting arrest, assault and menacing. The assaults and menacing were not directed toward the officers but toward citizens.

Monitor's Assessment: There were no compliance issues related to this complaint investigation.

2. Department Tracking Number: 02293, 09/28/02

Summary: Four officers were involved in the arrest of a suspect with an open warrant. An officer observed complainant on the street and recognized that complainant was wanted on an open felony warrant. According to the officer, as he approached, complainant began to walk away. According to complainant, he was approached by the officer and was immediately thrown to the ground for no reason and kicked in the ribs, head and in the hand area. Complainant alleges that he was maced twice for no apparent reason and, as a result of the macing, he kicked out the rear portion of the window of the police cruiser. He states in his interview that he kicked the inside of the police vehicle because for approximately ten minutes he sat in the back of the car with the mace on his face, and he had asked the officers if they would allow him to either wash it off of his face or scratch his face. The only force to which the officers admit are the two chemical sprays and a knee strike being delivered. As a result of the incident, the complainant received three additional charges of resisting arrest, vandalism and criminal damaging.

CPD Review: According to the investigation, all of the officers' stories were consistent and the only inconsistent story was the narrative provided by the complainant. The District Commander,

after reviewing the investigation and circumstance surrounding the incident, concurred with the investigating sergeant's assessment that the initial approach and force used during the arrest were within Department policy and procedure. The Inspections Section reviewed the use of force and also concluded that it was in compliance with Department policies and procedures. Inspections determined that the officer who applied the chemical spray was technically a witness because she first observed the encounter from a distance. Therefore, the use of force packet should reflect not zero witnesses, but one witness. Inspections also highlighted that procedure 12.600(D)(5) -- Prisoners: Securing, Handling, and Transporting -- was violated because two of the officers left a prisoner unattended in a vehicle while they were involved in the apprehension of the complainant. They were counseled not to leave a prisoner unattended in a vehicle.

Monitor's Assessment: The photos of the injured suspect did indicate some bruising on the forehead which could have been self inflicted. One of the photos indicated some bruising to the rib area, which the complainant had complained about, and which in all likelihood could not have been self inflicted. The investigating officer, however, stated that the photographs do not show any injuries. The issue of greatest concern is the fact that the investigating officer chose not to interview two witnesses. One was the son of the victim who was present at the time. The second was an individual who was detained by the backup officers in a police vehicle across the street. There is no indication in the investigative file that the investigating sergeant sought to interview these persons, nor is there a list of other potential witnesses that the sergeant attempted to interview.

### 3. Department Tracking Number:02221, 12/18/02

Summary: Citizen alleged that on December 10, 2002, he was improperly profiled because of his race by two officers. According to the citizen's complaint, he was walking in the Avondale area and approached by two officers in an undercover car; they exited the vehicle and immediately asked the complainant for identification. When the citizen did not immediately provide the requested information, the officers handcuffed and patted him down. The officers alleged that the complainant matched the description of an individual who had a warrant out for his arrest.

The complainant insisted that he was not the individual sought and that he wanted the officers to provide a photo of the individual. The officers initially told the complainant that no such photo existed. When a marked cruiser joined the scene, the officers admitted to the complainant that they did possess a photo identifying the suspect. The officers knew the suspect sought, because they had a prior incident involving the suspect two to three weeks before this date. The descriptions of the two individuals are different. The complainant is about 5'10, 145 lbs, while the suspect is 6'4, 165 lbs. Upon comparing the photo to the complainant, he was let go.

CPD's Review: IIS concluded that the officers had not engaged in racial profiling. CPD did find, however, that the officers violated policy in making the stop. The prosecutor's office concluded that the officers did not have legal reasonable suspicion to stop and detain the complainant, based solely upon his physical build being similar to the description of the subject they were looking for. The officers were counseled and given ESL's relating to the unjustified stop and pat down of complainant.

Monitor's Assessment: During the interview of the complainant, the investigator attempted to justify the officers' actions. Moreover, the investigator's interviews of the officers appeared incomplete. Her questions were leading and she did not follow up on inconsistencies in the officers' statements. For example, the investigator missed an opportunity to follow up on an inconsistent statement between the two officers involving the photo of the suspect. One officer stated that he was not truthful to complainant about the photo because it was an issue of safety. The second officer indicated that he had no knowledge that the photo existed. However, in their interviews, the officers stated they generated the photo several weeks earlier, when the suspect ran away. Also, the file does not indicate if the investigating supervisor interviewed all four officers involved, as she told the complainant that she would.

4. Department Tracking Number: 03004, 12/21/04

Summary: Two plainclothes officers and a uniformed officer came to complainant's house to look for her nephew, who was wanted on an Aggravated Robbery warrant. Complainant told

officers her nephew did not live with her. Officers requested to search and complainant asked if they had a warrant. They did not but told her they could get one. Complainant gave consent to search and the officers came in and searched the first floor apartment and basement.<sup>13</sup> Complainant told the officers that they could not search the second floor apartment. Complainant alleges an officer went up the stairs and then looked into a bathroom on the second floor after she told them that they couldn't. The officer states that he was already at the top of the stairs when complainant told them that they couldn't search the second floor, and he only flashed his flashlight up the hallway, looked around and then came right back down.

CPD's Review: IIS interviewed the officers and complainant.<sup>14</sup> IIS determined that the allegation of improper search was "not sustained" because the officers stated the officer looked down the second floor hallway at the same time that complainant rescinded her consent, while complainant said the officer looked at the second floor after she told him not to. IIS sustained a violation against the officers for not having complainant sign a Consent to Search Without a Warrant Form.

Monitor's Assessment: There were no compliance issues with this investigation.

5. Department Tracking Number                      03037, 01/08/03

Summary: Complainant alleges that, while being arrested for trafficking in drugs, an officer hit him on the right side of his head several times with his hand while making the arrest. The officer denies hitting complainant. The officer and three other officers involved in the arrest state that during a foot chase of complainant, he tried to climb over a fence, but could not make it over and fell.

CPD Review: The investigating supervisor completed an Injury to Prisoner Report (Form 18I) and took photos of the

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<sup>13</sup> The uniformed officer activated his MVR audiotape to record the complainant's consent. The tape is difficult to understand, but it does appear that complainant consented to the officers coming into the house.

<sup>14</sup> The tape of complainant's interview provided to the Monitor is at the incorrect speed and cannot be understood.

complainant. However, there were no taped interviews included in the file provided to the Monitor, and there is no additional statement from the complainant in the file to give a better understanding of the fact pattern. A review of the photos shows a slight abrasion to the complainant's knee that could have been sustained by tripping over a fence. The investigating sergeant recommended an "unfounded" finding for the complaint, and IIS closed the complaint with this determination without additional review. It appears IIS's only involvement was with respect to a supervisor's investigation of an employee injury. Apparently one of the officers in the process of the chase slipped on a wet, unlit area and injured his right leg. As a result, this officer was counseled about Procedure 12.536, which discusses the necessity to exercise caution during foot pursuits.

Monitor's Assessment: Taped interviews should have been taken by the investigating supervisor. Given the lack of information in the file, IIS should have conducted additional investigation. Also, given the two conflicting stories of the incident, there is no explanation for why the complaint was determined "unfounded" rather than "not sustained."

6. Department Tracking Number: 03024, 1/16/03

Summary: On November 24, 2001, complainant was in a combined restaurant/laundromat when an employee of the restaurant told complainant that the area he was in was closed and he needed to move to another part of the restaurant. The employee called the police stating the complainant was causing a disturbance. An officer arrived, approached complainant, and asked for identification. The officer states that complainant became belligerent, and that when complainant was advised he was being placed under arrest, he refused to be handcuffed. The officer called for backup. When the backup arrived, complainant allowed the officer to handcuff him and the complainant was escorted outside to the police vehicle. Complainant alleges that the backup officers walked him to the police car, that one of them jabbed him in the back with a PR24, that a second officer stepped on his foot and told him to "shut the fuck up" and a third officer unholstered his gun. He also alleges that he was shoved into the police car.

CPD Investigation: Complainant states that he complained about this incident in 2001 to OMI, but there is no evidence of this in the file. In January 2003, complainant filed a complaint with CCA, which referred the complaint to IIS. IIS interviewed complainant, the officers involved, and the restaurant employee (the IIS file provided to the monitor contains a written summary of this interview; the employee apparently declined to be interviewed on tape). The restaurant employee and the officers state that no officer unholstered his weapon, stepped on complainant's foot, or struck complainant with a PR 24.

Monitor's Assessment: The IIS investigator made several attempts to reach complainant before she was able to connect with him by phone. The investigator asked the appropriate questions of the officers, complainant and the witness employee. The investigation was completed within 90 days. Arguably, this complaint comes within the CCA's mandatory jurisdiction. However, a referral back to the CPD may be explained by the fact that the CCA's official start date was just ten days before the complaint was filed.

7. Department Tracking Number: 03056, 2/4/03

Summary: Complainant alleges that he was eating at a restaurant and approached a waitress and told her she was nice looking. An off-duty police officer then came up to him and told him to leave. Complainant asked if he could call a cab and sat down in a booth. The officer slammed his head onto the table and twisted his arm, causing his glasses to break. The officer then took him outside and slammed him to the ground, where he was held until a uniformed officer arrived and handcuffed and arrested him.

The off-duty officer states that he was eating in the restaurant when the complainant began arguing with and cursing at a waitress. The waitress told him to leave. He did so, but then came back inside the restaurant and was being belligerent. When it appeared that complainant was going to hit the waitress, the officer intervened. He approached the complainant from behind, grabbed him by the shoulders and told him he had to leave. The complainant, who was drunk, began flailing his arms and arguing with the officer. The officer put complainant in a booth and restrained him there while he asked the manager to call the police.

The waitress told the officer that complainant had a pocket knife earlier. When the officer heard uniformed officers arriving, he brought complainant outside. Complainant tried to take a swing at the officer and fell down. The officer held him down. When a patrol officer arrived, they tried to handcuff complainant, who resisted bringing his right arm from under his body. When they were able to get his arm out, he dropped a folded pocket knife that he had in his hand. The officer did not remember seeing complainant with glasses or recall anything about his glasses breaking. After the complainant was handcuffed, he asked the arresting officer to find his glasses. The officer found the broken glasses on the sidewalk.

CPD's Review: The arresting officer called his lieutenant after the arrest, but an intervening officer-assistance call prevented supervisors from responding to the scene at the time. The Lieutenant did tell the off-duty officer to complete a memo on the incident; he also went to the restaurant later that evening and interviewed the waitress, who corroborated the officer's story. Complainant called CCA with the complaint, which referred the matter to IIS. The IIS investigator spoke to complainant twice on the phone, but it was not a convenient time for complainant, and he said he would call IIS back. The investigator interviewed the waitress, the officers, and the store manager, who stated the officer grabbed complainant and escorted him out the door. There was a little bit of "scuffle," but the officer did not push complainant's head into the table. The manager then went to call police, so he did not see the encounter outside the restaurant. IIS closed the investigation as "not sustained."

Monitor's Assessment: There is no summary of the Lieutenant's interview with the waitress on the date of the incident in the file. Otherwise, there are no compliance issues with the investigation.

8. Department Tracking Number: 03128, 3/29/03

Summary: Plainclothes violent crime squad officers observed two subjects engaged in what appeared to be a drug transaction, and pulled up to the scene. Two officers chased one of the subjects when he fled, and the third approached the complainant. The officer told the complainant to take his hands out of his pockets

and to come over to the officer's van. The officer asked complainant if he had anything on him and complainant answered he "might have some weed on me." The officer asked if he could be searched, and complainant said yes. The officer reached into complainant's rear pants pocket and found a paper towel wrapping several bindles of what appeared to be heroin. The officer then handcuffed complainant, and continued his search. According to complainant, the officer then pulled his pants down, exposing his buttocks. He told the officer not to do that and to pull his pants up, and the officer became violent and slammed him to the ground. According to the officer, the complainant was wearing two pair of pants, and the officer felt something in the complainant's left rear pocket of his inside pair of pants. When he reached in to try and get what it was, the complainant told the officer to "fuck off" and that he was "not allowed to do that." The complainant tried to pull away, and the officer grabbed his waistband. The complainant then turned facing the officer and came towards him, and the officer grabbed the complainant's coat with both hands and took him to the ground. The complainant suffered an abrasion on his right knee.

CPD's Review: The investigating supervisor responded to the scene to investigate the use of force. During the interview, the complainant complained about having his pants pulled down and being slammed to the ground. The sergeant completed a Use of Force Report and concluded that the officer's use of force was consistent with Department policy, but he did not complete a citizen's complaint form, or follow up on the allegation that the officer pulled down complainant's pants. He did not ask complainant if or why he was wearing two pairs of pants. When the District Captain reviewed the Use of Force investigation and the taped statement of the complainant, he directed the sergeant to complete a complaint form and a complaint investigation. The sergeant then wrote a supplemental memo, in which he reported that the officer stated he never exposed complainant's buttocks, but that he did pull down complainant's outer pair of pants to get to the pocket of the second pair of pants. The sergeant also stated that during his investigation, he observed that complainant had two pair of pants on, and he recommended a "not sustained" finding.



Monitor's Assessment: The sergeant's initial investigation was very superficial and focused only on the take-down, and not on the complainant's allegation that his pants were pulled down, which was what prompted the physical altercation in the first place. The District Captain correctly directed the sergeant to complete a citizen complaint form and investigation, but the sergeant's supplemental memo on the complaint seems written with hindsight and reports statements by the officer that were not in his taped statement. While the sergeant may have noticed that the complainant was wearing two pairs of pants during his investigation (as he states in his supplemental memo), he did not include that information on the Use of Force Report. However, because the officer's and complainant's statements conflict, there were no other witnesses, and one cannot tell from the photos of complainant whether or not complainant was wearing two pairs of pants, a "not sustained" finding was appropriate.

9. Department Tracking Number: 03146, 3/23/03

Summary: Officers were patrolling near a complex of apartment buildings, when they saw a large crowd of people.<sup>15</sup> Two subjects (including complainant) broke off from the group and started walking away fast when they saw the officers' car, going around the back of a building. One officer jumped out of his car and began chasing them, while his partner went around the other side of the building. According to the officer, when the officer turned the corner, he saw one of the persons going into a doorway and the door slammed, and he saw complainant shoving something under a garbage can, and then throwing baggies away in the garbage can. The officer stated that he then directed the complainant to get down on the ground at gunpoint. He handcuffed complainant because there was gunfire in the apartment complex. The officer called for back up and began searching the garbage can. He found a gun under the garbage can and told the complainant that he was going to jail. The complainant started screaming and hollering, yelling that it wasn't his gun and twisting, and resisting going to the police car. By that time, the officer's partner and a sergeant had arrived. The sergeant states that when complainant became loud and disorderly, he

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<sup>15</sup> A sergeant involved in the incident stated there was a radio run of shots fired, but he arrived after the officers, and he may been responding to a shots fired broadcast that occurred after the officers already were on the scene.

grabbed the complainant's right arm (the officer had the left) to escort him to the car. All three officers state that the complainant pulled away. The arresting officer lost his grip and then grabbed the complainant again and sprayed him with chemical irritant. When he did this, the complainant rotated and fought, and when he twisted, he fell. The arresting officer states that complainant fell flat on his face, because he was handcuffed; the sergeant states that he landed on his side. Complainant then rolled on his back and began kicking and yelling. The officer tried to contain complainant's legs, and sprayed him a second time. Complainant then became compliant and was taken to Children's Hospital (he was 17 years old). There is a visible bruise and cut to complainant's forehead on the photographs of complainant.

The complainant's version is completely different. He states that he was not running away from the police. He says that he had been selling weed, but that he had none left and was just throwing away the baggies when the police came. They started talking to him and handcuffed him. The arresting officer grabbed hold of his shirt when they were taking him to the police car, and then threw him to the ground. The officer punched him and maced him, and started choking him. He stated that he got the bruise from the officer, but that he doesn't know what the officer hit him in the head with; he says he was punched. He stated that he did have alcohol that evening. He also stated that the officers said he had a gun, but that he didn't have a gun, and that the officers didn't get a gun from him.

CPD's Investigation: A District 3 sergeant responded to the hospital and interviewed complainant and then the three officers involved. He completed an Injury to Prisoner Form (Form 18I), a Citizen's Complaint Form and an addendum on the complaint. He recommended that the complaint be closed as unfounded. The District Captain reviewed the investigation and reclassified the finding as "not sustained" as there were no non-interested witnesses. Both the sergeant and the captain note that there are no civilian witnesses listed, even though the officers state that a crowd had started to form during the altercation. The sergeant explains this by stating that after the complainant was secured in the car, the officers went back locate witnesses, but the crowd had dispersed and they could not locate anyone who witnessed the incident.

Monitor's Assessment: Given the very different versions of the event, additional information in the file would have been helpful. For example, the complainant states that officers did not obtain a gun from him. Yet, he was charged with carrying a concealed weapon, and a gun is listed on the arrest report. The results of the criminal charges and any tests on the gun would have added weight to the officer's statements. The sergeant's interviews were not as complete as they should have been, but this was noted by the District Captain, who states that the District 3 Shift Commander is working on strengthening the sergeant's abilities in this area. The sergeant also does not address the initial approach, and whether the officers should have initiated a foot pursuit of the complainant based on the fact that he was trying to avoid police interaction.

## **B. CCRPs**

1. Department Tracking Number: 03043, 2/04/03

Complainant alleges she drove to an intersection where there was an officer with her police car angled across one of the lanes. Two cars had been stopped, and the drivers, each white, had exited their cars, talked to the officer, and she had let them through. When complainant approached the intersection, the officer jumped out of her car and yelled "Can't you see there is a roadblock." She alleges the officer continued to yell at her in a disrespectful way and that her actions were based on race. When complainant asked for the officer's name and badge number, the officer yelled she would give complainant a ticket and that would have her name on it. The officer pulled her cruiser behind complainant, and then told her that her sticker had expired. Complainant showed the officer that she had the registration sticker in the car, but hadn't put it on yet due to the cold weather and her arthritis. She was given two citations for an expired registration and failure to obey a police officer.

The officer states she was manning a roadblock and allowed two individuals through, because they were employees of companies located on the other side of the roadblock. The complainant tried to follow the second car through the roadblock, and the officer stated "Can't you see there is a roadblock?" She directed

complainant to turn her vehicle around. Complainant was visibly upset. When complainant turned, she drove the car so close to the officer, the officer had to side step to avoid being hit. The officer ordered complainant to pull off to the side of the road. The officer admits to raising her voice in ordering the complainant to pull to the curb. The investigating sergeant concluded that while the officer did not intend to offend, her actions were perceived as rude and unprofessional. The CCRP was sustained and the officer was counseled. A CCRP resolution meeting was held with complainant and the officer. Although complainant did not agree that the officer's actions were necessary, the sergeant states that complainant "left with an understanding of [the officer's] intentions."

2. Department Tracking Number: 03111, 3/2/03

Complainant was stopped by officers for having one headlight out and given a ticket. Complainant came in to District 5 to try to give the ticket back, because he claimed that the headlight was in working order, and that he was stopped because of his race. The sergeant who took the complaint told complainant that his challenge to the ticket would have to be made in court, but that he would complete a complaint on the profiling allegation. Another District 5 sergeant contacted complainant as part of the CCRP process and interviewed the officers involved. He also contacted the back seat passenger in complainant's car, who was arrested on open warrants. The sergeant concluded the traffic stop was valid and that the officers met Department standards. In informing complainant of the results of the investigation, the sergeant explained various police procedures and answered complainant's questions. According to the sergeant, although complainant was still going to contest the ticket in court, he was satisfied with the investigation. The CCRP was closed as "not sustained." [The Monitor notes that under the MOA and CPD procedures, discrimination complaints should be forwarded to IIS for investigation and not handled as CCRPs.]

3. Department Tracking Number: 03085, 3/16/03

Complainant alleges that an officer was rude and harassing to her 15 year old daughter on three occasions: (1) on March 15, the officer drove by her daughter on the street and called her a "fat

motherfucker;" (2) on March 16, the officer saw her daughter as she crossed the street and told her she was jaywalking; he then threatened to "kick her ass" because she was trouble and threatened to tell employees at the rental office that her daughter was a bad kid and get the family thrown out of the apartment; (3) later that day, the officer drove by the complainant's residence and yelled out to her daughter that she was a "fat mother fucker." The officer denies threatening or using obscene language toward complainant's daughter. He states that he saw complainant's daughter standing in the road on March 15, and advised her to step onto the sidewalk. The daughter punched her hand into her fist. On March 16, he saw her again when she stepped in front of the police car. He told her to use the crosswalk. She raised one finger towards him in an obscene gesture. She then crossed the street behind the police car, not in the crosswalk. He saw her later that day and told her that she needed to start using the crosswalk or he would issue her a citation the next time he saw her jaywalking. The account of the officer's partner is the same as that of the officer. The account of the daughter is the same as that of complainant.

The investigating sergeant interviewed a friend of the daughter who was with the daughter on March 15. She states that she and the daughter were talking loudly when the officer drove past; he thought the daughter's comments were directed at him. He stopped and asked "What did you say smart"<sup>16</sup> and then said "You need to go home and eat your food." The friend denies jaywalking, but also says that she did not hear the officer use profanity or threaten the daughter. The investigative sergeant also reviewed the MVR tapes, but the incidents were not captured on the tapes. The sergeant also states that he attempted to contact other witnesses listed by complainant, but he was unable to locate them as complainant did not provide an address or telephone number. The CCRP was closed as "not sustained." Complainant declined to attend a resolution meeting.

4. Department Tracking Number: 03084, 3/24/03

Complainant, an attorney, was representing a defendant in court who the officer had arrested. During the hearing, the officer

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<sup>16</sup> This is the language quoted in the CCRP report.

told complainant that his client was “eye fucking” a witness in the back of the room. After the hearing, in the hallway, complainant was talking with the officer, when he said to complainant “You are fucking with me.” Complainant walked away and requested the judge to hold the officer in contempt for using vulgar language, but the judge advised that the issue needed to be resolved without a contempt hearing. The officer admitted telling complainant to have his client stop “eye fucking” the witness in the case; he said this because the witness feared retaliation and the officer did not want anything to interfere with future court appearances. The officer says he told the complainant “You just fucked your client.” CPD sustained a violation of policy and made an ESL entry documenting counseling.

5. Department Tracking Number: 03095, 3/26/03

A day or two before 3/26/03, a patrol officer noticed eight to ten subjects on a corner. Next to them, hanging on the side of a business was a collection of bandannas, which he thought might be gang related. He entered the store and spoke to the employee at the front counter. The officer told the employee that he could remove the bandanas from the building, and the person did so. The officer returned to the store on 3/26/03, and noticed that the bandanas were put back up. The owner of the store approached the officer and complained that the officer had no right to take down the bandana display, which was a memorial to a person killed. The store owner filed a complaint that the officer was acting “outside his criminal scope,” was rude, and insensitive to the culture of the neighborhood. The investigating sergeant interviewed the store employee, who corroborated the officer’s statement, and met with the store owner. The store owner stated that the memorial was there when he opened his store 30 days before, and that he did not want any retaliation from those who put up the memorial. The sergeant concluded the officer did not know the bandanas were a memorial. The CCRP was closed as “exonerated.”

6. Department Tracking Number: 03101, 3/26/03

Bike officers entered carryout store and spoke to store employees about a crowd of people outside the store. According to the store owner, the officers tried to intimidate him and cite him for

violating community standards regarding a memorial outside the store (various bandanas and ribbons on the side of the building). Complainant states the officers accused him of contributing to the crowd, but he told the officer the crowds were patrons of the store and that the store could not be held responsible for the bandanas as the store does not own the property. Officers state they asked complainant if he permitted crowds to gather in front of the store, and complainant told the officer the crowds were not his problem. The officer states he did not accuse the employee of doing anything to draw the crowds. The employees had one version of the incident and the officers another; the sergeant concluded the officers "met standards." The CCRP was closed as "not sustained."

7. Department Tracking Number: 03118, 4/18/03

Complainant alleges that an officer was discourteous to him during a traffic stop and told him to shut up or he was going to go to jail. The officer states that she stopped complainant's vehicle for making several lane changes. She cited the driver, and also discovered that the passenger in the car had several outstanding capiases, for which he was arrested. She states that she was not rude. The officer's partner states that he did not see or hear the officer act or say anything improper. The investigating officer pulled and reviewed the MVR tape. The visual is recorded, but the officer admits she forgot to turn on her microphone, so there is no audio outside the vehicle. According to the investigating sergeant, the tape does not show any body language suggesting an argument or tension. The sergeant did not attempt to contact the arrested passenger. The CCRP was closed with a "not sustained" finding on the discourtesy, but with a "sustained" finding for a violation of procedures for not turning on her microphone during a traffic stop.

8. Department Tracking Number: 03136, 4/26/03

Complainant states that a female officer harassed her son. As the officer pulled up to the house, the son went inside; when the son walked back outside, the officer asked him for his social security number, and told him not to go in and out of the house. The officer stated that there was a lot of drug dealing in the area.

The investigating supervisor was unable to determine the identity of the female officer. The supervisor spoke to the

complainant and invited her to a resolution meeting. She also told complainant that the need to treat citizens with dignity and respect will be stressed with officers. Complainant was satisfied with phone conversation and declined the resolution meeting. The CCRP was completed within 30 days and was closed as "not sustained."

9. Departmental Tracking Number: 03199, 5/10/03

Complainant alleged that an officer on detail at an IGA store followed her and her family through the store. He was not disrespectful, but she felt that the officer followed her because of her race. Complainant did not complain to the officer or the store manager at the time. Investigating supervisor spoke to complainant, officer, the night manager and the owner of the store. The officer stated that he did not follow complainant and was unaware she was upset. A resolution meeting was held where the officer apologized for any impression the complainant had, and explained his role as a security guard for the store; complainant accepted the apology. The supervisor concluded that the officer "met standards" and the CCRP was closed as "unfounded." Given that this case involved allegations of discrimination, IIS should have taken responsibility for the investigation.

10. Departmental Tracking Number: 03192, 4/20/03

Complainant came to the District 4 station to report a burglary and was told by an officer what information was needed for a burglary report. She returned and completed the burglary report with the assistance of a second officer. When she returned to District 4 to request that the burglary suspect be arrested for violating a CPO (Civil Protection Order), she alleges that the first officer was rude to her, became aggressive and threatened to arrest her. The officer states that he checked with CWPU (Central Warrants Processing Unit), and that CPO was not enforceable. He states that complainant yelled obscenities at him when he explained that, and that he told her she could be arrested if she continued her disorderly behavior. When the officer came out into lobby to make an arrest, a sergeant arrived and intervened. The sergeant filled out a complaint form on the incident. While another officer corroborates that complainant became disorderly after she was told the CPO was unenforceable, three witnesses who



accompanied the complainant to the police station stated that the officer was rude and abusive. The investigating supervisor determined that the officer "did not meet standards" and issued verbal counseling. A CCRP resolution meeting was held, but according to the file was discontinued when the complainant used racial epithets toward the officer. The CCRP was closed as "sustained."

11. Department Tracking Number: 03152, 5/21/03

Officers were dispatched to a hospital to take an assault report from complainant's daughters. Both officers had been to complainant's residence numerous times for various runs. Complainant states that the officers were rude to her and her three daughters, repeatedly asked about the whereabouts of her son, who was wanted, told her that her son was "wanted dead or alive," told complainant "I don't like you," and argued about whether to take pictures of the daughters' injuries. The investigation revealed that one officer did ask multiple times about the wanted son, told the complainant he didn't like her, argued over whether the pictures would show any injuries and, while he took the pictures, gave them to the complainant instead of attaching them to a police report. The other officer did say "make sure you spell it right" when one of the daughters asked for her name and badge number. The District sergeant determined that the officers "did not meet standards" and the file was closed with a "sustained" finding. The officers were counseled.

12. Department Tracking Number: 03172, 6/10/03

Summary: Two officers were investigating an abandoned vehicle and stopped their police car in the westbound lane of the street. A vehicle with extended tow-enhancing mirrors attempted to pass the police car traveling eastbound. The mirror on the passenger side of the car struck the mirror of another car parked on the south side of the street. This car belonged to complainant. The officers exited their car and the complainant came out of her house. Complainant claimed the accident was a direct result of the position of the police car, and engaged in a heated argument with one of the officers. A supervisor responded to the scene and took the complaint. The supervisor interviewed the participants and reviewed the MVR tape, which recorded the exchange. The

supervisor determined that the position of the police car did not cause the accident, but that the officer was discourteous and did not meet standards. The complaint was closed as “sustained,” and the officer was counseled.

**APPENDIX 1**  
**USE OF FORCE TABLE**

	3 <sup>rd</sup> Q 2002	4 <sup>th</sup> Q 2002	1 <sup>st</sup> Q 2003	2 <sup>nd</sup> Q 2003
Chemical Irritant	93 (24 restrained)	117 (15 restrained)	122 (26 restrained)	155 (15 restrained)
Physical Force	52	67	71	79
PR 24 baton	9	7	5	3
Canine	5	5	2	5
Taser	1	1	1	2
Beanbag	1 (animal)	0	0	4
Pepper-ball	1	0	1	1
Firearms Discharge	0	0	1	0

## **APPENDIX 2**

### **REVIEW OF PROBLEM SOLVING WRITE-UPS**

#### Scanning Section of Reports:

- Too little information, and sometimes confusing information, is provided about the actual problem. Five of the eight reports identify the following problems, noise (1 report), “codezone”<sup>17</sup> (2 reports), drug sales (1 report), neighborhood “eyes”<sup>18</sup> (1 report), but for no apparent reason, the case title for each of these different projects is “street lights.”
- Each report notes the date the report was entered into the system, but not the date the actual project started.
- For a number of the projects, details about the problem are missing, so the reader is left to guess what the problem actually is; this is the case for projects CPOP03141, CPOP030142, and CPOP030143.

#### Analysis Section of Reports:

- While most of the reports reference the fact that calls-for-service data was used, in seven of the eight reports, there are no details on the number of calls for service to the location or a breakdown by percentages of the types of calls at that location.
- Some of the reports state that there has been an “increase in calls for service,” but there is no mention of the level of calls before versus the current level – in other words, there is no evidence of an upward trend, or whether the increase in calls occurred over a 1 month, 6 month or 1 year period.
- The reports do not provide information on the timeframes used for the analysis of calls for service (e.g., 1 year, 2 years, or 6 months).
- For projects involving problem properties, the analysis portion of the report should contain details about the property owner’s management practices (or lack of specific ones) that appear to contribute to the problem, if known.
- In projects describing loitering or drug sales, reports should note the approximate number of people engaged in these

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<sup>17</sup> We assume that this refers to Building Code and Zoning violations.

<sup>18</sup> This likely refers to neighborhood eyesores.

activities at that specific location. This number can be gained from surveillance (intermittently over a one-week period) of the site.

- If drug dealing is the identified problem, it would be important to note whether the Street Level Narcotics Unit had worked on the problem in the past, the impact that had, and why the problem may still be occurring.<sup>19</sup>
- In the section that describes procedures or legislation that could help in reducing the problem, the reports typically state that “local ordinances” would be helpful. However, users of the site will want to know exactly which local ordinances or proposed ordinances are relevant, how they will be used, and then in the response portion of the report, whether they worked to reduce the problem.
- If data is analyzed by police or citizens, the results should be reported. The reports should note:
  - The type of data analyzed (e.g., a business owner *crime concern* survey; calls for service from July 2002 through July 2003; a number count of people loitering from three surveillances over a one-week period);
  - A description of the type of analysis used (e.g., survey responses tallied; calculated percentages of calls by type and compared to other streets to illustrate harm levels);
  - A description of what the analyzed data showed (e.g., the problem on this block began around 1999 with the opening of the corner convenience store; the bus stop and the pay phone located in front of the convenience store offer too many opportunities for those loitering and involved in drug sales to say they are engaged in a legitimate activity; calls for service show a steady monthly increase from 23 calls in July 2002 to 32 calls in July 2003; based on three different surveillances it appears that the same five young men stand outside the store at most times and are intermittently accompanied by four to six other young men; by July 2003, drug sales represented one-third of the calls on this specific block, an additional third are for shoplifting, one-sixth

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<sup>19</sup> Community groups should be cautioned about taking on drug sales and loitering problems that are too large or spread over too many blocks, although they may want to take on one block at a time. Otherwise, the likelihood of quality analysis and highly tailored responses (highly specific to each building or retail shop in the problem area) lessens.

of the total calls involve violence in front of the convenience store – shots fired and assaults, and the rest are miscellaneous).

Reporting this type of information provides a fuller picture of the problem and begins to point towards more likely solutions.

- In several reports, the Analysis 2 section is left blank. This section may need some additional tailoring to make it more useful.
- The reports do not show evidence of any research of “best practices,” as proposed by the CA

#### Response Section of Problem-Solving Reports:

- The reports should provide explanations for specific strategies chosen. For instance, if a strategy is implemented on only one evening of the week to counter activity at the location, the report should explain why (e.g., the evidence may be that the majority of the problem exists on that specific night of the week and not other nights).
- If a response involves another city agency, the date of contact should be noted, along with the name and phone number of the contacted person.
- The response portion of the report should contain the dates of implementation of the different responses so that it is clear when assessment of impact should begin.

#### Assessment Section of Problem-Solving Reports:

- For those projects inputted that are already in the assessment stage, evidence of impact should be included. For instance, if claims of reduction are based on reduced calls for service to the location, the claim should be accompanied by actual data analysis of the number and types of calls reduced and the percentage reductions achieved by call type. This will highlight whether the strategies worked on one aspect of the problem (but perhaps not for all aspects), and indicate if additional analysis (of the unaffected types of calls) is needed.